

LLW *notes*

Volume 20, Number 2 March/April 2005

Northwest Compact/State of Utah

Governor Declines to Put Envirocare Expansion on Special Session Agenda

In mid-April, Utah Governor Jon Huntsman, Jr. declined to put on the end-of-April's legislative special session agenda a resolution to allow Envirocare to proceed with its plan to expand the company's operations. As a result, the company will have to wait until a subsequent special session or the January 2006 general legislative session to take their request regarding expansion to lawmakers.

"Jon Huntsman believes strongly the public comment period needed to play out," said Jason Chaffetz, the Governor's Chief of Staff, in announcing the decision not to put the expansion plans on the legislative special session agenda. "DEQ needed time to digest the comments and make a ruling. Unfortunately, the timing just barely missed."

The Utah Division of Radiation Control Board held a public meeting on April 14 to take comment on Envirocare's expansion plans. In response to comments from environmental activists and others, Envirocare officials changed the license amendment request to exclude additional disposal capacity at this time. Dane Finerfrock, Executive Secretary of the Radiation Control Board, has already given preliminary regulatory approval to the license amendment as changed. It is not clear when final regulatory approval will be provided. Even with

such approval, however, legislative and gubernatorial approval is also required.

Background

In March 2005, Envirocare of Utah asked Utah regulators for permission to expand the company's operation onto 536 acres of land that was purchased from Cedar Mountain Environmental—a prior, potential competitor—when the business was purchased from Khosrow Semnani by Steve Creamer and business associates in January. (See *LLW Notes*, January/February 2005, pp. 1, 5-7.) In so doing, the company initially asked regulators to amend its state permit to allow it to build new waste handling facilities, a rail line, an administration building and a disposal cell. (The request for additional disposal capacity was later dropped from the license amendment request.)

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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

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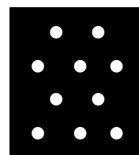
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Key to Abbreviations

U.S. Department of Energy	DOE
U.S. Department of Transportation	DOT
U.S. Environmental Protection Agency	EPA
U.S. Government Accountability 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 Meets in Salt Lake City, Utah and Visits Envirocare Facility

The Low-Level Radioactive Waste Forum met in Salt Lake City, Utah on September 14 – 15, 2005. A site visit to the Envirocare of Utah facility was held in conjunction with the LLW Forum meeting, as was an Executive Committee meeting and Officers' Meeting.

Attendance

Approximately 50 persons attended the one and one-half day meeting, including 21 members of the Board of Directors representing all nine operating low-level radioactive waste disposal compacts and 10 states, six Federal Associate Members representing four different federal agencies, nine Non-Federal Associate Members representing various companies, four other state and compact representatives, seven other individuals, and one staff member.

Agenda

The following agenda items were discussed at the Salt Lake City meeting:

- ◆ reports on new developments in states and compacts, including a focus session on the Texas siting process for the proposed Waste Control Specialists' low-level radioactive waste disposal facility;
- ◆ passage of the initiative regarding the Hanford reservation including a review of current legal action and potential implications;
- ◆ advances in protective clothing for workers to reduce the generation of low-level radioactive waste;
- ◆ the role of states and compacts in responding to radiological dispersal devices;

- ◆ the status of the U.S. Department of Energy's Manifest Information Management System (MIMS) and the new Office of Commercial Disposition Options;
- ◆ facility status updates by Envirocare of Texas, Waste Control Specialists, US Ecology and Chem-Nuclear;
- ◆ the development of a joint statement and draft legislative language by the Health Physics Society and the Organization of Agreement States on uniform safety and security regulations for radioactive materials;
- ◆ activities and views of the U.S. Nuclear Regulatory Commission regarding low-level radioactive waste management and disposal;
- ◆ the recent passage of a revised position statement by the American Nuclear Society on the disposal of low-level radioactive waste;
- ◆ the publication of a report by the Electric Power Research Institute on advanced nuclear power plants;
- ◆ standards by the U.S. Environmental Protection Agency for the proposed Yucca Mountain high-level waste repository; and
- ◆ an overview of the current status of NRC's rulemaking on the release of solid materials.

Other Items of Interest

In addition, it was reported that several members of the Board of Directors served on a panel at the Waste Management '05 Conference in Tucson, Arizona on February 28 to discuss the evolving environment for low-level waste management and disposal. This is the second year in a row that the LLW Forum has been invited to present such a panel discussion.

It was also reported that management for the National Directory of Brokers and Processors has been transferred to staff of the Southeast Compact. The project was originally undertaken as a joint venture between the LLW Forum and the compact. The directory can be found at www.bpdirectory.com.

Executive Session and Actions Taken by the Board of Directors

During the Executive Session, the Board received a financial report from the Treasurer and was provided with an update from a representative of the U.S. Department of Energy about the status of an application from the LLW Forum for a new three-year grant. In addition, the Board elected a new Executive Committee and Officers for 2005. The Board also passed resolutions regarding proposed draft legislative language on uniform safety and security regulations for radioactive materials and on activities by the U.S. Government Accountability Office.

Grant from DOE On April 1, the LLW Forum received an award letter for a three-year “matching funds” grant from DOE pursuant to a grant application submitted by the organization in October 2004. The grant begins April 1, 2005 and ends on March 31, 2008.

Election of Officers The Board elected the following individuals to the Executive Committee and/or as officers for 2005:

Susan Jablonski, Texas Compact (Chair)
William Sinclair, State of Utah (Chair-Elect)
Jack Spath, State of New York (Past-Chair)
Terrence Tehan, State of Rhode Island (Treasurer)
Ted Buckner, Southeast Compact
Mike Garner, State of Washington
Marcia Marr, State of Illinois/Central Midwest Compact
Stanley York, Midwest Compact

Resolution re Discrete Sources The Board passed a resolution requesting a meeting or conference call with representatives of the U.S. Nuclear Regulatory Commission, the Health Physics Society, the Organization of Agreement States, and the Conference of Radiation Control Program Directors’ to discuss proposed legislation regarding uniform safety and security regulations for radioactive materials. Letters of invitation to participate in such a meeting or call were sent to

all of the organizations on March 24 and the LLW Forum is currently working on logistical arrangements therefore.

Resolution re Activities of GAO The Board also passed a resolution asking that the U.S. Government Accountability Office consult with them ... as the officially designated representatives of states and compacts ... on any and all reports and activities involving low-level radioactive waste management and disposal. Since LLW Forum Directors are appointed by Governors and compact commissions, it was the sentiment of the group that it is appropriate that they should be given the opportunity to convey the views and positions of their respective states and compacts on related-matters being studied by GAO prior to publication of any reports or study documents. A letter conveying the resolution was sent to GAO officials on April 1, 2005.

Future Meeting and Site Visit Dates

The next meeting of the LLW Forum will take place on September 22 – 23 in Las Vegas, Nevada. There will be a site visit to Yucca Mountain and/or the Nevada Test Site on September 21.

The winter 2006 meeting of the LLW Forum will be held in Austin, Texas. The Midwest Compact is co-sponsoring the Texas meeting. The fall 2006 meeting will be held at a location, to be determined, in the Southeast Compact region.

The winter 2007 meeting will be held in San Diego, California. The fall 2007 meeting has not yet been scheduled. Entities interested in sponsoring or hosting the fall 2007 LLW Forum meeting should contact Todd D. Lovinger, the organization’s Executive Director, at (202) 265-7990.

(Continued from page 1)

According to a company spokesperson, Envirocare wants to upgrade the aging rail line and “rollover”—the part of the rail line where the waste is emptied from train cars. The company also plans to add a new crusher for waste compaction and a shredder. The new administration building will allow the current building to be used for other administrative purposes.

Facility opponents, however, are not happy about the expansion plans and argue that it is an attempt by the new owners to “supersize” the site. They claim that the expansion plans will allow the company to take more waste and to add 35 to 50 years of disposal operations at the site. But, an Envirocare spokesperson was quoted in local press as saying that is not the company’s intention. Indeed, the original acreage will allow the company to operate for another 17 to 20 years without expanding onto the new property. According to the spokesperson, the new acreage needs to be brought in under the Envirocare permit so that it can be included in the facility’s closure and post-closure surety required by the state.

State law requires that the expansion plans receive approval from Tooele County, the legislature and the Governor.

Rocky Mountain Compact/State of Colorado

Adams County Commissioners Object to Proposal to Dispose of Radioactive Waste at Clean Harbors Facility in Colorado

On March 23, the Adams County Board of Commissioners sent a letter to the Colorado Department of Public Health and the Environment expressing its formal objection to two applications made by Clean Harbors Deer Trail Inc. to allow the disposal of radioactive waste at the company's facility near Last Chance, Colorado.

In October 2004, Clean Harbors filed an application for renewal of its Resource Conservation and Recovery Act (RCRA) permit that included modifications to allow for an increase in the level of radioactive emissions greater than background material. Shortly thereafter, the company applied to the state Department of Public Health and Environment for a radioactive materials license.

In the letter, the county commissioners refer to an August 15, 1983 resolution that the county passed to authorize the hazardous waste facility that stated that radioactive material was not to be accepted for disposal. According to the commissioners, “There was a promise made to the public by both Adams County and the State of Colorado regarding the prohibition on the disposal of radioactive material at this facility.” The commissioners' letter states that Adams County intends to keep its promise. Accordingly, the letter goes on to state as follows:

We object to the proposed increase in the level of radioactivity presented by Clean Harbors. The renewed State RCRA Permit should reflect the original background level of Radioactive > 16 uR/hr. An increase in the level of acceptable radioactive material in the State RCRA Permit will jeopardize the Certificate of Designation Adams County issued for the Facility.

Southeast Compact

Southeast Compact Commission Meets re Post-2008 Assessment

The Policy and Planning Committee of the Southeast Compact Commission for Low-Level Radioactive Waste Management will meet in May. The meeting will be held from 4 p.m. – 6 p.m. on May 5, 2005 and from 9 a.m. – noon on May 6, 2005 at the Radisson Hotel on Marco Island, Florida. (www.marcobeachresort.com)

On Thursday, May 5, an "Assessment of the Need for Disposal of Low-Level Radioactive Waste Generated in the Southeast Region after July 2008" will be presented and discussed. On Friday, May 6, options for access to disposal for low-level radioactive waste generated in the Southeast Region after July 2008 will be presented and discussed. All commissioners and waste generators are encouraged to attend. The meeting is open to the public.

For additional information, contact the Southeast Compact Commission at (919) 821-0500 or secc@secompact.org

Texas Compact/State of Texas

WCS Application Declared Administratively Complete

On February 18, the Texas Commission on Environmental Quality (TCEQ) issued a notice to Waste Control Specialists LLC that the company's August 2004 application to operate a near-surface low-level radioactive waste disposal facility in Andrews County, Texas has been declared administratively complete.

According to Glenn Lewis of the Radioactive Material Licensing Team, Waste Permits Division, "[t]he application currently is undergoing a merit review." A public meeting regarding the application is being planned in Andrews, Texas and the TCEQ expects to issue a public notice regarding that meeting soon. Moreover, a technical review of the application must be conducted.

Lewis also states that "[a]llowing for the possibility of public hearing regarding this application, the question whether to issue a license may be considered by TCEQ Commissioners in 2007."

A link to a copy of the notification package issued to WCS will soon be posted on the TCEQ website at <http://www.tnrc.state.tx.us/permitting/wasteperm/uicrw/rad/>.

Background

The TCEQ issued a first notice of administrative deficiency to WCS on September 17, 2004. WCS

responded thereto by letter dated October 17, 2004. (See *LLW Notes*, September/October 2004, p. 1.) The second notice was issued two months later -- on November 17 -- to which WCS responded by letter dated December 17. (See *LLW Notes*, November/December 2004, p. 1.) A third and final notice of administrative deficiency was issued on January 14, 2005.

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."

WCS' Responses to Prior ANOD's Now On-Line

For the information and review of interested persons, TCEQ added to its website the responses Waste Control Specialists, LLC made to the three notices of administrative deficiency that were issued to the company during the administrative review of its license application for disposal of low-level radioactive waste.

During the course of the administrative review, the applicant was asked on three occasions for various clarifications or additional information to its original application. Those requests and responses can be seen at the following URL:

<http://www.tnrc.state.tx.us/permitting/wasteperm/uicrw/rad/>

Public Meeting Held re WCS License Application

On March 31, a public meeting was held in Andrews County, Texas to receive comments regarding the license application from Waste Control Specialists, LLC for near surface disposal of low-level radioactive waste. The meeting, which began at 7:00 p.m., was held at the Andrews High School Little Theater (1400 NW Avenue K, Andrews, Texas).

Further information about the meeting can be found on the Office of Public Assistance meeting calendar at http://www.tceq.state.tx.us/comm_exec/opa/calendar.html

WCS' application may be viewed on the internet at: <http://www.tnrcc.state.tx.us/permitting/wasteperm/uicrw/rad>

The Meeting

Logistics and Content The TCEQ notice about the public meeting states as follows:

[The] public meeting ... will consist of two parts, if time permits: an Informal Discussion Period and a Formal Comment Period. During the Informal Discussion Period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application, but comments made during the Informal Discussion Period will not be considered by the TCEQ Executive Director in evaluating the application. The Informal Discussion Period may be shortened to allow everyone the opportunity to submit formal comments. During the Formal Comment Period, members of the public may state their comments into the official record. The comments will be summarized and considered by the TCEQ Executive Director in the evaluation of the application. Once the technical review of the application has been completed, another comment period will be provided to submit comments on the application, draft license and environmental

report, if applicable, and the executive director's recommendation to issue a license or deny the application.

Members of the public were encouraged to submit written comments anytime during the meeting or by mail prior to the meeting to the Office of the Chief Clerk, TCEQ, MC-105, P.O. Box 13087, Austin, TX 78711-3087.

Next Steps After the technical review of WCS' application is completed, a Notice of the Completion of Technical Review will be published and distributed.

Background

Legislation In the summer of 2003, the Texas House of Representatives passed H.B. 1567. The legislation amended 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 2004, was approved by both the Texas House and Senate in late May 2004 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 Application On August 4, 2004, Waste Control Specialists, L.L.C. announced that it had filed an application for state approval to operate a low-level radioactive waste disposal facility in

Andrews County, Texas. (See *LLW Notes*, July/August 2004, pp. 8 - 9.) The 4,000-page license application was submitted to the Texas Commission on Environmental Quality pursuant to legislation passed by the Texas Legislature and a notice filed by the Texas Commission on Environmental Quality (TCEQ) with the Secretary of State that allowed applications to be accepted from interested parties for a 30-day period from July 8 through August 6, 2004. Pursuant to the regulations, the WCS application was accompanied by a \$500,000 license application fee.

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, WCS 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.

Prior Notices of Administrative Deficiency
State regulations allow for the potential for three Administrative Notice of Deficiencies (ANOD's) prior to a determination of administrative completeness of the application by the TCEQ.

The TCEQ issued a first notice of administrative deficiency to WCS on September 17, 2004. WCS responded thereto by letter dated October 17, 2004. (See *LLW Notes*, September/October 2004, p. 1.) The second notice was issued two months later—on November 17—to which WCS responded by letter dated December 17. (See *LLW Notes*, November/December 2004, p. 1.) A third and final notice of administrative deficiency was issued on January 14, 2005.

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."

Finding of Administrative Completeness On February 18, 2005, the Texas Commission on Environmental Quality (TCEQ) issued a notice to Waste Control Specialists, LLC that the company's license application has been declared administratively complete. (See related story, this issue.) According to Glenn Lewis of the Radioactive Material Licensing Team, Waste Permits Division, "[t]he application currently is undergoing a merit review." In addition, a technical review of the application must be conducted.

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

Legislation Introduced to Restrict Waste to Initial Party States of Texas Compact

In mid-March, Texas state Representative Villarreal introduced legislation in the Texas House of Representatives to limit the acceptance of waste at the proposed low-level radioactive waste disposal facility for the Texas Compact to waste generated from the initial compact party states of Texas, Maine and Vermont. The draft legislation, House Bill 1656, has not yet been referred to committee.

In particular, the draft legislation states as follows:

"Notwithstanding any other provision of this subchapter, the commission may license the

disposal of low-level radioactive waste only if the low-level radioactive waste is generated in a state that was an initial party state of the compact ..."

The draft legislation further states that it would take effect immediately if it receives a vote of two-thirds of all the members elected to each house. If it does not receive the constitutionally required number of votes to take immediate effect but does indeed pass both houses, then the draft legislation states that it would take effect September 1, 2005.

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

Legislation Introduced in Texas re Imposition of Fees and Surcharges

On Friday, March 11, Texas State Senator Robert Duncan introduced legislation that, among other things, transfers certain responsibilities of the Department of State Health Services concerning radioactive materials to the Texas Commission on Environmental Quality (the "Commission") and imposes fees and surcharges on the storage, processing or disposal of radioactive substances within the state. The draft legislation, S.B. 1667, has not yet been assigned to committee.

Responsibilities and Authorities

Under the draft bill, the Commission would have the jurisdiction to regulate and license:

- (1) the disposal of radioactive substances;
- (2) the processing or storage of low-level radioactive waste or naturally occurring radioactive material waste received from other persons;
- (3) the recovery or processing of source material;
- (4) the processing of by-product material; and
- (5) sites for the disposal of low-level radioactive

waste, by-product material or naturally occurring radioactive material waste.

Fees and Surcharges

Fees Under the draft bill, a licensee that stores, processes or disposes of radioactive substances within the State of Texas must make quarterly payments to the state general revenue fund of "an amount equal to 10 percent of the license holder's gross receipts received from operations under [its] license." However, the draft legislation provides that such fee payments do not apply to the gross receipts of commercial low-level radioactive waste or federal facility waste disposed of at a compact facility under the terms of the Texas Low-Level Radioactive Waste Disposal Compact and Texas state law.

Surcharges The draft legislation further provides that surcharges are to be collected by licensees from persons delivering radioactive substances thereto. The Texas Commission on Environmental Quality is charged with establishing the amount of the surcharges, which are to be paid to the state general revenue fund on a quarterly basis. The amount of the surcharges are to be based on the types of radioactive substances, the hazard presented by the radioactive substances and any materials, chemicals, biological hazards, or items with which the radioactive substances are mixed or shipped, and the size of the shipment. The surcharges do not apply to the delivery of waste under the terms of the Texas Low-Level Radioactive Waste Disposal Compact.

The draft legislation provides that "[i]n considering the hazard presented by radioactive substances and any materials, chemicals, biological hazards, or items with which radioactive substances may be mixed or shipped, the commission shall consider:

- (1) the radiation dose rate of the radioactive substances, measured in roentgens per hour;
- (2) the curie content of the radioactive substances, measured in picocuries per volume of the substances shipped or measured by millicuries per shipment;

- (3) the radioactive half-life of the radioactive substances;
- (4) additional hazards that may be presented by the shipment, including whether the radioactive substances or an associated material, chemical, biological hazard, or item requires special precautions in handling, processing, storage, or disposal; and
- (5) the radioactive, physical, and chemical properties of each type of radioactive substance.”

The draft bill states that the Commission shall consult with the advisory board and the legislative budget board and consider the recommendations of those boards before adopting or amending surcharge rates. Also, rules adopted by the commission may include provisions establishing classification of customers and services, as well as applicability of fees.

The text of the draft legislation can be found on-line at <http://www.capitol.state.tx.us/cgi-bin/tlo/textframe.cmd?LEG=79&SESS=R&CHAMBER=S&BILLTYPE=B&BILLSUFFIX=01667&VERSION=1&TYPE=B>

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

Local Sierra Club Chapter Challenges WCS Amendment re Fernald Waste

On April 11, the Lone Star Chapter of the Sierra Club announced that it is filing a request for a contested case hearing to challenge a license amendment issued by Texas regulators that will allow Waste Control Specialists to dispose of uranium byproduct material from Fernald, Ohio at the company's facility near Eunice, New Mexico. The amendment, which was approved in February

by the Texas Department of State Health Services, expands WCS' site capacity for the temporary storage of radioactive waste from 250 thousand cubic feet to 1.5 million cubic feet. "The attempt by Waste Control Specialists to get approval to bring another huge volume of radioactive waste to Texas is part of the company's attempt to make our state a dumping ground for such wastes from around the country -- solely for the sake of the company's profits," said Ken Kramer, Texas state director for the Sierra Club.

Fernald is the site of an old nuclear weapons processing plant that was operated in Ohio by the U.S. Department of Energy. The Sierra Club's news release expresses concern about the risks associated with transporting the waste to the site and notes that an estimated 3,500 tanker truckloads are anticipated to transport the waste.

In announcing the license amendment challenge, the Sierra Club stated in part as follows:

The license amendment being opposed today by the Sierra Club only allows the 'temporary' storage of the waste from Fernald, Ohio. Once the waste gets to Texas it will have nowhere else to go, however, and WCS is seeking approval to keep it here. Then, Texas will be stuck with the waste that Ohio and the U.S. DOE are now stuck with—over one million cubic feet of radioactive uranium waste housed in temporary containers, threatening to leach uranium, radium and radioactive elements into the environment.

Both the Attorney General of Nevada and the Governor and the Legislature of Utah have refused to let their states take this waste. In addition, the Governor of Arizona requested that the waste not be transported through Arizona. The waste contains a much higher level of radioactivity and volatility than 'regular' uranium waste

In the closing of its press release, the Sierra Club argues that the WCS facility was not engineered to be a permanent disposal site for this type of waste and that the appropriate safeguards to protect the public are not in place.

Public Citizen Also Files Challenge

Public Citizen reportedly also filed a request for a contested case hearing to challenge the license amendment allowing Waste Control Specialists to dispose of uranium byproduct material from Fernald, Ohio at the company's facility. A pre-hearing on the challenge, as well as that by the Sierra Club, is expected to be held in early- to mid-May to determine whether they are "affected parties." In the meantime, the license amendment is in effect.

Similar filings occurred after the first Waste Control Specialists' license was issued, but it did not go beyond the hearings stage.

No formal decision has been made by DOE's cleanup contractor on the Silo 1 and 2 waste.

U.S. Congress**NRC Submits Legislation to Congress re Accelerator-Produced Material**

On March 30, U.S. Nuclear Regulatory Commission Chair Nils Diaz submitted to the U.S. Congress a draft legislative package that, among other things, includes reclassification of NARM materials as byproduct material under the Atomic Energy Act. According to NRC, the inclusion of accelerator-produced and certain other radioactive material under its jurisdiction will augment "the Commission's regulatory authority to protect the public health and safety and to promote the common defense and security with regard to radioactive materials."

Coverage of Accelerator-Produced and Other Radioactive Material in Definition of Byproduct Material

Background, Purpose and Effect The Atomic Energy Act of 1954 provides NRC with the

regulatory authority over certain defined radioactive materials. Among these materials are "byproduct material," which is currently defined to include any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material, and tailings or waste produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content. This definition does not encompass all radioactive material and, in particular, does not cover accelerator-produced material, discrete sources of radium-226, or discrete sources of naturally occurring radioactive material.

According to NRC's legislative memorandum in support of the the proposed bill, the amendment would permit NRC to regulate discrete sources of radium-226, certain hazardous discrete sources of naturally occurring radioactive material (NORM), other than source material, and accelerator-produced material, where they are produced, extracted or converted for use in commercial, medical, or research activities. For the most part, it would not extend NRC's authority to NORM and would specifically not include such materials as residues from drinking water and waste water treatment processes, scale from pipe used by the fossil fuel industry, diffuse sources of radioactive material such as pipe scale resulting from petroleum production, fly ash, sewer sludge, phosphate fertilizer, or other similar materials. Instead, NRC's focus would be on NORM materials that pose a threat similar to that posed by discrete sources of radium-226 to the public health and safety or the common defense and security.

In its memo, NRC acknowledges that some federal agencies address some aspects of the materials that the proposed amendment would add to the definition of "byproduct" material although not, according to NRC, in a comprehensive manner. In addition, the agency notes that many states address accelerator-produced radioactive material and discrete sources of naturally occurring material (other than source material) that is extracted or converted for use in commercial, medical, or

research activities. But, the states approach is not uniform according to NRC. Extending NRC's regulatory authority and oversight to cover these materials would, according to the agency, "provide regulatory consistency and predictability for users of the materials and provide a more reliable event reporting database for events occurring with respect to such materials, thus ensuring that the material is adequately controlled."

The proposed amendment would add the newly covered materials to NRC's Agreement State program and would allow Agreement States to amend their agreements, if necessary, to reacquire regulatory authority over these materials after NRC establishes and promulgates uniform standards. NRC anticipates that most current Agreement States would elect to cover these materials under their agreements and that some non-Agreement States may elect to enter into new agreements with NRC for that purpose.

The proposed amendment does not cover diffuse sources of radium-226 or naturally occurring radioactive materials because "[t]heir coverage would require a significant expenditure of additional resources by the NRC, and other governmental bodies have the experience necessary for dealing with them."

Impact on Disposal Capability With regard to the proposed amendment's impact on disposal, NRC's memo to Congress states as follows:

As indicated previously, the NRC currently does not have regulatory jurisdiction over accelerator-produced material or discrete sources of Radium-226. If the Congress were to place these materials within NRC's regulatory jurisdiction by defining them to be 'byproduct material' under the Atomic Energy Act without making special provision for their disposal, this would mean that in accordance with the Low-Level Radioactive Waste Policy Act (LLRWPA), as amended, these materials would have to be disposed of at low-level radioactive waste disposal facilities licensed by either the NRC or an Agreement State. Due to interstate import

and export restrictions adopted by compacts under the LLRWPA, this could eliminate for generators in the majority of States a national disposal capability for discrete radium sources that is currently available to generators across the nation. Section (d)(2)(A) and (B) of the amendment to the Atomic Energy Act regarding treatment of accelerator-produced and other radioactive material as byproduct material, coupled with section (d)(4)(A) and (B) of the amendment, would preserve the availability of the existing disposal capacity for these types of materials for all States.

In addition, to the extent that the newly covered material is included in the definition of byproduct material, converting this material into Atomic Energy Act material would likely result in making any Act that excludes Atomic Energy Act material from the Act's coverage (such as the Solid Waste Disposal Act, popularly referred to as the Resource Conservation and Recovery Act (RCRA)) inapplicable. This would result in limiting disposal capacity for certain material by precluding it from being disposed of in some EPA or State-permitted RCRA facilities without explicit approval of the Atomic Energy Act authorities. Section (d)(3) would preserve the capability of solid and hazardous waste facilities to accept such material for disposal, if they are currently able to do so, and would not prevent other facilities from obtaining the necessary permits to do so. The Federal and State agencies with regulatory authority over the facilities would retain the ability to modify a disposal facility's permit to prohibit the disposal of such materials in the future, if deemed appropriate.

Effective Date and Waivers NRC is recommending that the proposed amendment become effective immediately upon enactment. "However, in order to provide the time necessary for the Commission and the States to do the work required for full implementation of the amendment,

authority would be provided to the Commission to grant waivers of requirements imposed by the section with respect to a matter or class of matters relating to the newly covered material, if the Commission determines that granting such a waiver is consistent with the public health and safety and the common defense and security.” Waivers with respect to imports into and exports from the United States would be limited to one year from the date of the Act in order to comply with the IAEA Code of Conduct for the Safety and Security of Radioactive Materials. With respect to other matters or classes of matters, waivers would be limited to four years from the date of enactment.

Relation to Proposal by HPS and OAS NRC’s legislative proposal to reclassify NARM materials as byproduct material under the Atomic Energy Act is similar to a joint position statement and draft legislative language put forth recently by the Health Physics Society (HPS) and the Organization of Agreement States (OAS). (See *LLW Notes*, January/February 2005, pp. 28 – 30.) While similar, the draft legislation does however contain some differences from the HPS and OAS language. Interested persons are therefore encouraged to carefully compare the two versions.

Other Objectives Covered by Draft Legislation

In addition to the above-stated, the draft legislation submitted by the NRC would accomplish the following objectives:

- ◆ authorize, in certain instances, NRC to allow security guards to possess more powerful weapons when they are engaged in the protection of NRC-licensed or NRC-certified facilities or of radioactive material or of other property owned or possessed by an NRC licensee or certificate holder;
- ◆ expand, in certain instances, fingerprinting and criminal history check requirements to any individual who is permitted access to safeguards information or unescorted access to an NRC licensed utilization facility or radioactive material or other property subject to NRC regulation;
- ◆ make unauthorized introduction of weapons into NRC-regulated facilities a federal crime;
- ◆ make it a federal crime to sabotage commercial nuclear facilities, fuel, and Commission-designated material or property (including during the construction period);
- ◆ clarify that NRC’s jurisdiction extends to former licensees of production or utilization facilities to the extent that they own or control decommissioning funds;
- ◆ clarify that in the case of a combined construction and operating license the initial duration of the operating authorization runs from the time the Commission authorized operation;
- ◆ eliminate the Commission’s antitrust review authority with respect to pending or future applications for a license to construct or operate a utilization facility;
- ◆ authorize the Commission to collect or assess fees from other federal agencies for services provided to them;
- ◆ make NRC’s 90 percent fee recovery requirement permanent; and
- ◆ clarify that the existence of an organizational conflict of interest does not bar the Commission from entering into a contract or other arrangement for work to be performed by a Department of Energy laboratory or the operator of such a laboratory, provided that the Commission determines that the conflict of interest cannot be mitigated and that adequate justification exists to proceed with the contract or other arrangement.

In addition to the above, the Commission noted in its transmittal letter to Congress that it supports the enactment of legislation extending the Price-Anderson Act as it applies to NRC licensees.

A copy of the draft amendment can be found on the NRC’s public web site in the Agencywide Documents Access and Management System (ADAMS) under accession number ML050900404. Section 105 addresses the coverage of accelerator-produced and other radioactive material in the definition of byproduct material.

U.S. Department of Energy

New Data Placed on MIMS: LLW Forum to Provide Informal Quality Control Assistance

The Low-Level Radioactive Waste Forum agreed at its most recent meeting in Salt Lake City, Utah to serve as an informal quality-control mechanism for the U.S. Department of Energy in evaluating the quality and accuracy of the data on the Manifest Information Management System (MIMS). To do so, DOE officials will notify the LLW Forum when new data is placed on the system. Thereafter, as LLW Forum members review the data in their normal course of business, they will notify the organization's Executive Director and DOE staff if errors or discrepancies in the data are identified. DOE staff will then work with the LLW Forum member identifying the problem and the facility operators to correct any issues with the data.

In this regard, DOE staff recently notified the LLW Forum that the 2004 data has been entered in MIMS for both the Envirocare and Barnwell low-level radioactive waste disposal facilities. DOE staff will notify the LLW Forum when the US Ecology data has been received and entered in the system.

In addition, the LLW Forum will be investigating the possibility of holding a MIMS workshop with DOE officials in conjunction with the September LLW Forum meeting in Las Vegas, Nevada to provide further opportunity to discuss modifications or adjustments to the system "in person" with DOE staff and representatives from the facility operators.

U.S. Nuclear Regulatory Commission

NRC Publishes Staff Paper re Rulemaking on Control of Solid Waste

On April 18, the U.S. Nuclear Regulatory Commission published a staff paper requesting Commission approval for publication of a proposed rule in the *Federal Register* to amend 10 CFR Part 20 "to include radiological criteria for controlling the disposition of solid materials that have no, or very small amounts of, residual radioactivity resulting from licensed operations, and which originate in restricted or impacted areas of Nuclear Regulatory Commission (NRC)-licensed facilities." Solid material includes furniture, metal, equipment, concrete and soil.

Background

NRC's current approach is to make decisions on the disposition of solid materials by using a set of existing guidelines, primarily based on survey instrument capabilities. As a result, NRC's decisions in this area are inefficient in that they lack an overall risk basis, consistency, and regulatory finality. The proposed rule is intended to improve NRC's regulatory process by incorporating risk-informed criteria into the Commission's regulations for disposition of solid materials.

NRC staff has engaged in several information-gathering activities as part of its decision-making for the proposed rulemaking and has actively sought stakeholder participation and input on alternate disposition approaches. Such activities have included requesting public comment via *Federal Register* notices and the holding of nine public meetings. In addition, staff supported a study by the National Academies to obtain an independent review of the issues and alternatives.

Federal Agencies and Committees *continued*

NRC staff also studied a variety of reports by other organizations and conducted various technical studies.

NRC staff conducted an enhanced participatory rulemaking on controlling the disposition of solid materials in response to an October 25, 2002 staff requirements memorandum from the Commission. A website on NRC's activities regarding the disposition of solid materials can be found at www.nrc.gov/materials.html.

Discussion

Staff considered and discussed with stakeholders a range of alternate approaches including a rule allowing unrestricted release of solid material (i.e., the clearance approach); an approach in which all solid material goes to a licensed low-level radioactive waste disposal facility (i.e., the prohibition approach); and a limited disposition approach. The staff decided to recommend a limited disposition approach that it believes is a balanced consideration of technical issues and overall stakeholder concerns.

The proposed approach is believed by NRC to be consistent with reports from the National Council on Radiation Protection and Measurements and the National Academies of Sciences. It is also believed to be consistent with "the diverse range of stakeholder comments that sought uniform standards for release, but which were either concerned about unrestricted releases or did not specifically support an unrestricted release approach."

However, the NRC staff memo notes that comments were received from cooperating agencies (both federal and state) and other interested stakeholders that did not agree with the recommended approach, disputed the setting of a dose criterion at 1 millirem per year, questioned the need for a rulemaking at all, and/or preferred an alternative approach. Persons interested in reviewing such comments are directed to the staff memo themselves.

Recommendations

NRC staff is proposing to amend NRC regulations to establish requirements having the following elements:

- ◆ A Dose Criterion Set at 1 Millirem Per Year: According to NRC staff, this dose criterion is based on scientific analysis and regulatory considerations and is a generic constraint set well below levels established to ensure adequate protection of public health and safety.
- ◆ Limited Allowed Disposition Paths: Solid material meeting the 1 millirem per year dose criteria would be allowed to be released from licensed control if sent to: (a) disposal in an EPA/state regulated landfill; (b) re-use in a pre-defined set of uses (specifically concrete in roadbed construction and re-use of tools and equipment); or (c) other disposition paths—such as, in particular, metal recycle and soil disposition—if supported by a case-specific analysis and approval of proposed procedures.
- ◆ Tables of Volumetric and Surface Nuclide Concentration Levels Associated with the Dose Criterion of 1 Millirem Per Year: Solid material would be considered acceptable for release if its nuclide concentrations did not exceed the levels in the tables.
- ◆ A Record-keeping System: Maintenance of records would provide reasonable assurance that disposition of solid material has been conducted in accordance with the provisions of the proposed amendment.

Representative Markey's Letter of Opposition

After publication of the above-referenced documents, Representative Edward Markey (D-MA) sent a letter to the NRC arguing that the agency should not embark on a rulemaking to release slightly radioactive waste from regulatory control and allow it to be disposed of as non-radioactive material. Markey's letter asserts that moving forward with the rulemaking would

“jeopardiz[e] public health and safety and undermin[e] the already limited levels of trust the public has in the Commission.” Markey is asking the NRC to itemize what it has spent on development of the proposal since the early 1990’s, how long it would take to complete a rule, and how the agency would involve the public in the process.

The staff paper, proposed rule, draft generic environmental impact statement (NUREG-1812), and draft regulatory analysis are available on NRC website under ADAMS accession number ML050750495 or by going to <http://www.nrc.gov/reading-rm/doc-collections/commission/secys/2005/secy2005-0054/2005-0054scy.html>.

ASLB Rules in Favor of PFS re Proposed Spent Fuel Facility

On January 24, the Atomic Safety and Licensing Board issued two rulings that, in effect, dismissed the State of Utah’s remaining arguments against plans by Private Fuel Storage, LLC to construct and operate a spent fuel storage facility on the Skull Valley Band of Goshutes Indian Reservation in Utah and cleared the way for NRC to approve the utility consortium’s license application. The rulings, which came down on separate appeals from the state and Private Fuel Storage, are a setback in the state’s efforts to block the consortium’s efforts to construct a facility 45 miles southwest of Salt Lake City that would store up to 44,000 tons of spent fuel from eight utility companies that make up the consortium.

In one ruling, the board voted 2 to 1 to set aside its own earlier decision that the possibility of a fighter jet from a nearby Air Force base crashing into the facility posed an unacceptable risk of releasing radiation. PFS had appealed that earlier ruling arguing, among other things, that the durability of the casks are such that the risks of a radioactive release from such an accident do not exceed federal risk standards. Two of the panels three judges agreed with PFS, while the dissenting

judge contended that the number of fighter jet crashes analyzed was insufficient to reach such a conclusion.

In the other ruling, the licensing board dismissed arguments by the state that the license should be denied because the casks proposed to be used at the PFS facility would not be accepted for transfer to a federal nuclear repository. The state made such a contention after an official at the U.S. Department of Energy told state officials and local press in October 2004 that the casks would not be accepted because they would not be packaged according to federal contract requirements. The licensing board, while ruling against the state on the issue, noted that it was “too important to be ignored” and advised NRC to address it in some other manner.

Since PFS signed a lease with the Goshutes eight years ago, the licensing board has heard 125 “contentions” regarding the proposed facility. Upon announcement of the licensing board’s most recent rulings, John Parkyn—head of the PFS’ consortium—hailed the decisions as “a great advancement for the nuclear industry in America” and said that the proposed facility “will provide an important alternative to the need to continue addressing storage for spent fuel at 72 separate locations across the United States.” Parkyn stated that the facility could begin accepting shipments of spent fuel rods by 2007.

Despite the licensing board’s decisions, the PFS facility still faces significant obstacles. For instance, the governance of the Skull Valley Band of Goshutes is in dispute and questions have been raised about the legality of the lease that its leader signed with the consortium. Moreover, the tribe’s Chair, whose position is being challenged by other tribal members, is set to stand trial in April on charges that he stole tribal money and cheated on his federal income taxes. And, certain fractions within the tribe oppose the project and have vowed to go to federal court if NRC issues a license to PFS.

Even if NRC issues a license, as anticipated, PFS must still get final approval from the Bureau of

Indian Affairs and the Bureau of Land Management. The BLM approval is complicated by a moratorium on wilderness studies on the Utah Test and Training Range, which is located next to the proposed facility site and upon which a transfer station would need to be constructed.

State officials, according to local press articles, have vowed to continue the fight against the proposed facility. The state can appeal the licensing board's rulings to the board itself or to the NRC Commissioners or it can file an appeal in the U.S. Court of Appeals for the Tenth Circuit or the Washington, D.C. Circuit Court. Currently, an appeal is pending before the Supreme Court that seeks to reverse a lower court decision overturning Utah laws aimed at blocking the proposed PFS facility.

A publicly-available version of the board's decision that sets forth only a general summary of the aspects of its reasoning and leaves out expert witness testimony and documentary evidence that can not be disclosed can be found at <http://www.nrc.gov/what-we-do/regulatory/adjudicatory/pfs-aircraft05.pdf>.

ALSB Hears Oral Arguments on Appeal of PFS' Decision

On April 6, the Atomic Safety and Licensing Board heard oral arguments on the State of Utah's request that the board reconsider its February 24 decision against the state on the second phase of the accidental aircraft crash issue. The session was open to the public for observation, but participation was limited to counsel for the State of Utah, the applicant (PFS) and the NRC staff. All of the earlier proceedings leading to the board's February 24 decision had been closed to the public because they involved non-publicly-available (safeguards information) facts and analyses concerning the impact of plane crashes on concrete and steel objects. With regard to the April 6 hearing, however, the board directed all counsel to frame their oral arguments about the matters in issue (already covered in non-public written pleadings) to avoid direct reference to the specific facts underlying those issues so that the session could be open to the public.

NRC Staff Brief ACNW re LLW Activities and White Paper

The U.S. Nuclear Regulatory Commission's Advisory Committee on Nuclear Waste met in Rockville, Maryland on April 18 – 19.

During the course of the meeting, NRC staff briefed the committee on planned activities and emerging issues in the area of low-level radioactive waste including the following:

- ◆ an overview of NRC's low-level waste program;
- ◆ an analysis of the current disposal situation;
- ◆ a review of potential activities later this year including reports by the Government Accountability Office, Congressional interest, and release of a study by the National Academies of Sciences;
- ◆ a review of major milestones in low-level radioactive waste disposal;
- ◆ an analysis of NRC's statutory plan and strategic role with regard to low-level radioactive waste disposal;
- ◆ a review of NRC low-level waste activities including storage guidance, 10 CFR 20.2002 alternate disposals, GTCC disposal activities, technical assistance to agreement states, Integrated Materials Performance Evaluation Program reviews, and international work; and
- ◆ a review of related activities by NRC including work on TENORM and disposition of solid materials.

The committee is interested in how it can contribute to work being done by the staff on issues such as greater-than-class C efforts and storage guidance.

In regard to NRC's view of the national low-level waste program, staff referred to the following statement in NRC's May 2004 letter to GAO:

“We also believe that although the current disposal system in the U.S. is safe, it is not generally considered to be reliable (i.e., generators do not have good assurance that disposal will be available to them over the next 5 to 10 years) or cost effective.”

In addition to hearing the report from NRC staff, the committee provided comment on a draft outline for a proposed white paper on low-level radioactive waste. The paper appears mainly to address improvements in Part 61 regulations and some waste management practices as well. The committee hopes to send an outline of the paper to the Commission in June.

A transcript of the ACNW meeting will be available on the NRC web site in early May.

NRC Holds Public Meeting re Clinton ESP Application

The U.S. Nuclear Regulatory Commission held a public meeting on April 19 to obtain comment on the agency’s preliminary conclusion that environmental impacts would not prevent issuing an Early Site Permit (ESP) for the Clinton site, which is located about six miles east of Clinton, Illinois. The preliminary conclusion is contained in NUREG-1815, “Draft Environmental Impact Statement (EIS) for an Early Site Permit at the Exelon ESP Site.” The draft EIS—which was the subject of the April 19 meeting in Clinton— is open for public comment until May 25.

The ESP process allows an applicant to address site-related issues, such as environmental impacts, for possible future construction and operation of a nuclear power plant at the site. The Clinton application was filed September 25, 2003 by Exelon Generation Company, LLC. If approved, the permit would give Exelon up to 20 years to decide whether to build a new nuclear unit on the site and to file an application with the NRC for approval to begin construction.

The NRC staff’s preliminary recommendation is that a permit should be issued. The staff’s conclusion is based on its independent review of a report submitted by Exelon, taking into account consultations with federal, state, tribal and local agencies and consideration of comments received during the public scoping process. The staff’s preliminary conclusions include a finding that there are no environmentally preferable or obviously superior sites, and that any adverse environmental impacts from possible site preparation and preliminary construction activities at Clinton could be redressed.

The draft EIS and related documents are available electronically for public inspection in the NRC Public Document Room in Rockville, Maryland. They are also available on the NRC’s web site at <http://www.nrc.gov/reactors/new-licensing/esp/clinton.html>.

At the conclusion of the public comment period on May 25, the NRC staff will consider and address the comments provided, then issue a final EIS on the environmental acceptability of an ESP at Clinton later in 2005.

NRC Holds Public Meeting on Possible Combined License Application

On March 14, the U.S. Nuclear Regulatory Commission held a public meeting to discuss with Duke Power and interested stakeholders the company’s possible application for a Combined License (COL) to build a nuclear power plant.

The COL was created in 1989 when NRC amended its licensing regulations to provide an alternative to the existing process. Prior to the amendment, an applicant had to first obtain a construction permit. Following completion of construction and testing, the applicant then had to obtain an operating license before a plant could

start up. A Combined License, however, authorizes both construction and conditional operation of a nuclear power plant. The COL process incorporates inspections, tests, analyses, and acceptance criteria into the construction phase to provide information necessary to demonstrate that the reactor could operate safely once construction is complete.

The meeting included discussion of possible COL application strategies and review schedules, as well as how the agency and Duke would interact during the pre-application stage. Members of the public were allowed to observe the meeting and discuss the possible COL application with NRC staff after the business portion of the meeting, but before the meeting adjourned.

NRC Holds Evidentiary Hearings re Proposed Uranium Enrichment Plant

On February 7, the U.S. Nuclear Regulatory Commission's Atomic Safety and Licensing Board began evidentiary hearings in Hobbs, New Mexico on a proposed uranium enrichment plant to be built in Lea County. During the course of the hearings, the ASLB heard evidence on four environmental contentions regarding the proposed National Enrichment Facility to be built by Louisiana Energy Services near Eunice, New Mexico. The contentions relate to impacts on ground and surface water, water supplies, waste storage and the need for the facility. The hearings were open to the public in general; however, parts were closed due to discussions involving sensitive information.

NRC Proposes to Amend Licensing, Inspection and Annual Fees Rule

The U.S. Nuclear Regulatory Commission is proposing to amend its regulations for the licensing, inspection and annual fees it charges applicants and licensees for fiscal year 2005.

Congress requires that the agency recover nearly all of its annual appropriated budget through two types of fees. One is for specific NRC services, such as licensing and inspection activities, that apply to a specific license. This fee is calculated using an hourly rate. The other is an annual fee paid by all licensees, which recovers generic regulatory expenses and other costs not recovered through fees for specific services. These fees are contained in NRC regulations 10 CFR Part 170 (fees for licensing and inspection services) and 10 CFR Part 171 (annual fees). These fees are paid to the U.S. Treasury and go into the general fund.

By law, NRC must recover 90 percent of its budget for FY 2005 from fees, less the amount (\$68.5 million) appropriated from the Nuclear Waste Fund for high-level waste activities. The total amount to be recovered in FY 2005 is \$540.7 million, about \$4.6 million less than last year, when the mandate was to recover 92 percent of the agency's budget. After accounting for carryover and billing adjustments, the net amount to be recovered is approximately \$538 million.

Under the proposed rule, the hourly rates used to assess Part 170 fees would change to allow the funds recovered to reflect more accurately the resources NRC expends providing licensee-specific services. The proposal also reflects higher salaries and benefits resulting from the government-wide pay raise. The new hourly rates (\$205 for the Nuclear Reactor Safety Program and \$198 for the Nuclear Materials and Waste Safety Program) would not alter the apportionment of fees charged to Parts 170 and 171. Fees not

recovered under Part 170 would still be recovered under Part 171 to collect the 90 percent of the budget for FY 2005.

Annual fees for FY 2005 were determined under the “re-baselining” method because of the magnitude of budget changes for certain classes of licensees. Re-baselining fees would result in decreased annual fees compared to FY 2004 for five classes of licensees (power reactors, test and research reactors, spent fuel storage/reactor decommissioning, rare earth mills, and transportation), and increased annual fees for two classes (fuel facilities and uranium recovery). Most materials users would have increased annual fees.

NRC Issues Annual Assessments

The U.S. Nuclear Regulatory Commission has issued annual assessment letters to 102 of the country’s 103 operating commercial nuclear power plants. The Commission will not issue an annual assessment letter to the Davis-Besse nuclear facility in Ohio because it is currently under a special oversight program.

“These letters give interested members of the public an overview of how the plants have performed,” said Bruce Boger, Director of the Division of Inspection Program Management in the NRC’s Office of Nuclear Reactor Regulation. “The NRC will meet with the licensees of each plant to publicly discuss their performance over the past year.”

In addition to the annual assessment letters, plants also receive an NRC inspection plan. Updated information on plant performance is posted to the NRC web site every quarter. Most plants also receive a mid-cycle assessment letter during the year. The next mid-cycle letters will be issued in September.

The assessment letters can be found at <http://www.nrc.gov/NRR/OVERSIGHT/ASSESS/index.html>.

NRC Considers Changes to Regulations on Safeguards Information

The U.S. Nuclear Regulatory Commission is considering putting into its regulations a variety of security-information-handling actions directed by the Commission since September 11, 2001. The information involved, known as “Safeguards Information,” is a special category of sensitive unclassified information authorized to be protected under the Atomic Energy Act. In many ways it is handled like classified information. Individuals provided access to Safeguards Information must have a valid “need to know” such information and, for certain categories of information, must undergo a criminal history check, including fingerprinting.

The unauthorized release of this information could result in harm to the public health and safety and the nation’s common defense and security. Release could also effect damage to the country’s critical infrastructure, including nuclear power plants and other facilities and materials licensed and regulated by the NRC.

Information designated as Safeguards Information must be protected from unauthorized disclosure and must be physically controlled and protected. Physical protection requirements include secure storage, document marking, limited reproduction, protected transmission and controls for information processing on electronic systems. As provided in the Atomic Energy Act, inadequate protection of Safeguards Information, including inadvertent release and unauthorized disclosure, may result in civil and/or criminal penalties; willful violation is a felony subject to fines or imprisonment.

Some types of NRC licensees, such as nuclear power reactors, are already required by NRC regulations to have a Safeguards Information protection program. NRC issued orders after September 11 that extended the types of information to be protected by such licensees.

Other orders were issued to licensees not previously explicitly subject to Safeguards Information protection requirements in the regulations, such as certain licensees authorized to manufacture or initially transfer items containing radioactive material.

Although new Safeguards Information requirements could continue to be imposed by issuance of orders, it has been Commission policy to codify requirements in the regulations and not rely indefinitely on orders to impose needed generic requirements.

NRC Issues Advisory to Nuclear Facility Operators re Personnel Security Controls

In late March, the U.S. Nuclear Regulatory Commission issued an advisory to nuclear facility operators emphasizing the need for a heightened level of awareness in ensuring the proper identity of personnel at facilities, even when escorted. The advisory was issued after an incident was discovered where a foreign national used a false social security number and a false alien registration card to obtain escorted access to work at a nuclear power plant. According to NRC, “[a]lthough the worker was escorted at all times while he was at the nuclear power plant, the incident points to the need for heightened vigilance in checking the true identity of such individuals.” In order to obtain unescorted plant access, individuals are subject to an array of additional checks.

The NRC urged licensees to check identities against a national security database. Licensees were encouraged to report promptly the fraudulent use, or attempted use, of false identification information. NRC states that it “continues to work closely with other federal agencies to address this issue and will advise its licensees of any further developments.”

NRC Proposes Revised Post-Fire Standards

The U.S. Nuclear Regulatory Commission is proposing revised requirements for nuclear power plant operators that concern their fire protection plans to include manual actions for safely shutting down the plant after a fire. The requirements are outlined in a proposed rule that would apply to plants that began operation prior to January 1, 1979. These plants have the option to adopt the NRC’s approved alternate methods for using manual actions to safely shut down the reactor after a fire. Compensatory manual actions by plant personnel had been previously implemented. The proposed rule is intended to provide consistent standards by which the NRC can ensure manual actions are adequate.

The proposed rule would amend NRC regulations to formally describe where and how manual actions would be acceptable. The manual action would have to provide protection comparable to either a fire barrier capable of withstanding a fire for an hour, or to 20 feet of space with no intervening flammable material. The requirements also require fire detectors and fire suppression equipment in the fire area. Under the rule change, plant operators will have to provide thorough evaluations of how their proposed manual actions provide acceptable protection.

For more information on the proposed rule, contact NRC staff members David Diec at (301) 415-2834 or dtd@nrc.gov or Alexander Klein at (301) 415-3477 or ark1@nrc.gov.

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).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

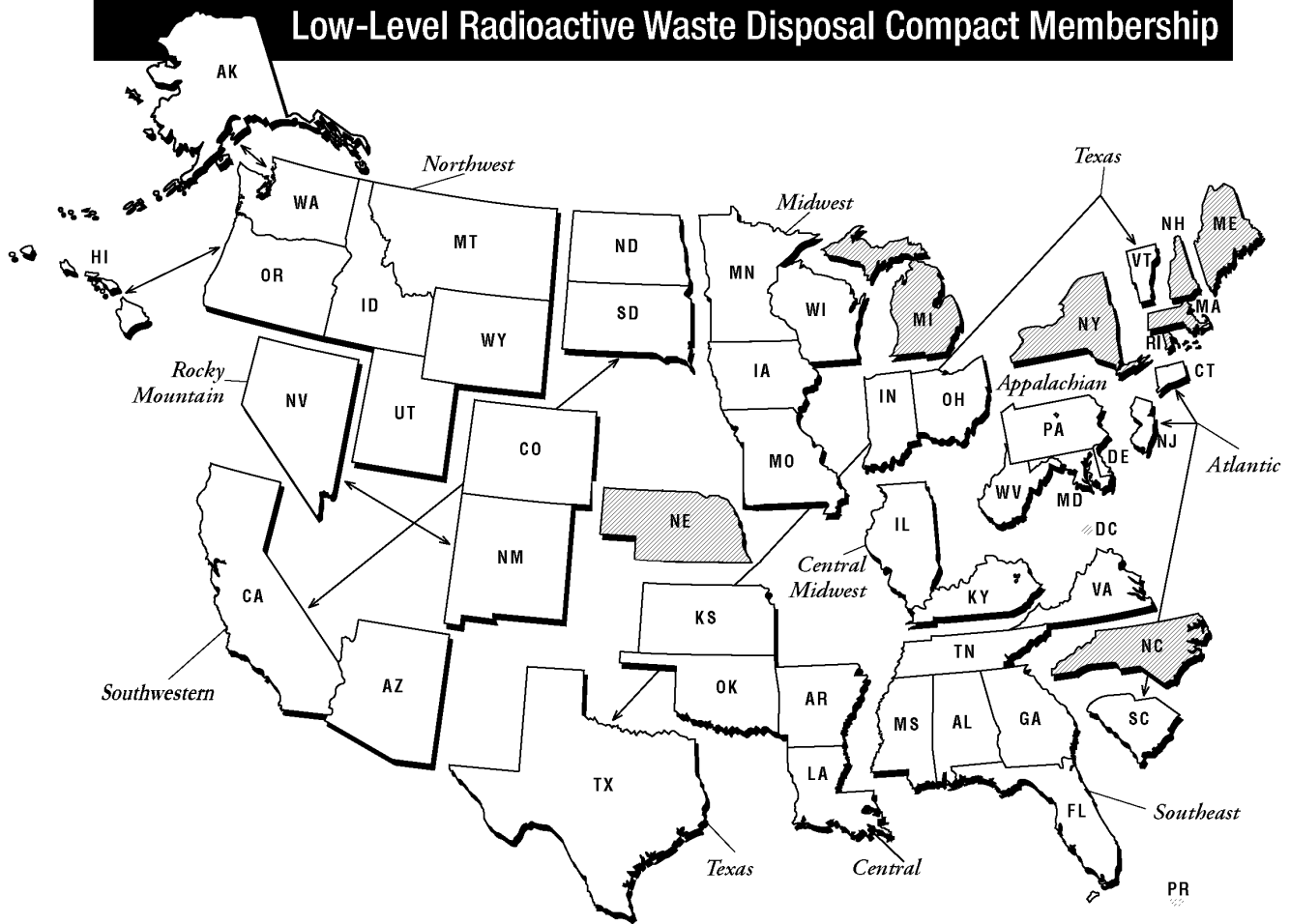
To access a variety of documents through numerous links, visit the web site for the LLW Forum, Inc. at www.llwforum.org

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.

Low-Level Radioactive Waste Disposal Compact Membership



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
Puerto Rico
Rhode Island