

LLW *notes*

Volume 20, Number 6 November/December 2005

Northwest Compact/State of Utah

Utah Governor Rejects Envirocare Expansion Plans

In mid-November, Utah Governor Jon Huntsman, Jr. told local press that he will not approve Envirocare of Utah's amendment request to expand its low-level radioactive waste disposal operations onto 536 acres of adjacent land that the new owners of Envirocare purchased earlier this year ... a move that would effectively double the size of the company's operations. "No. N-O," said Huntsman. "This is our soil. It's our sovereignty. It's our image and reputation, and I happen to see it in that sense."

The announcement, which came as a surprise, follows a decision by the Utah Division of Radiation Control to approve the expansion request this past summer. However, that decision is currently under appeal and state law requires that both the Governor and legislature also approve the expansion request.

Local Opposition

The Governor's announcement that he will not approve Envirocare's expansion request follows the transmittal of opposition letters from Citizen's Against Radioactive Waste to the governor and Utah's 104 legislators. In the letters, the group calls on them to reject the expansion plans, asserting that Envirocare has accepted 93 percent of government low-level radioactive waste that went to commercial

facilities between 1998 and 2003. With 12 million cubic feet of waste accepted during the first six months of this year, they claim Envirocare is on track to set another record.

In addition, at a meeting on October 19, the Utah Radiation Control Board determined to consider a formal appeal filed by Healthy Environment Alliance of Utah (HEAL Utah) in opposition to Envirocare's amendment request to expand its operations. (See LLW Forum News Flash titled, "Control Board to Consider Appeal of Envirocare's Expansion Request," October 21, 2005.) HEAL Utah's appeal calls for more information on the quantity of waste that would be disposed in the expanded area as well as the type of waste, its origins and "the schedule for developing disposal sites, and how disposal sites will be constructed."

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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.

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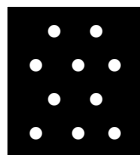
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Key to Abbreviations

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 to Meet in Austin, Texas in March 2006

The next meeting of the Low-Level Radioactive Waste Forum will be held in Austin, Texas on March 20-21. The meeting, which is being co-sponsored by the State of Texas and the Midwest Interstate Low-Level Radioactive Waste Compact, will be held at the Omni Austin Hotel Downtown. A meeting of the Executive Committee will be held on Monday, March 20, from 7:30 a.m. until 9:00 a.m.

Persons planning to attend the meeting must register in advance. The meeting is free for members; there is a \$500 registration fee for non-members. A meeting bulletin and registration form can be found on the LLW Forum's web site at www.llwforum.org. A draft agenda will be available in February 2006.

The March 2006 Meeting

Location The Omni Austin Hotel Downtown is located at 700 San Jacinto Street at 8th Street, Austin, Texas 78701. The phone number for the hotel is (512) 476-3700. The toll-free number for reservations is (888) 444-OMNI (6664). The hotel's website is www.omnihotels.com.

Reservations A block of 40 overnight rooms has been reserved for Sunday, March 19, 2006 and Monday, March 20, 2006 and a block of 10 overnight rooms for Tuesday, March 21, 2006 for meeting attendees at the special rate of \$80.00 + tax per night for single or \$110.00 for double occupancy. Non-smoking rooms are available. The Hotel offers complimentary high-speed wireless Internet access either in-room or in designated hotel areas. **Please ask for a room in "THE LOW-LEVEL WASTE FORUM" block when making reservations.**

Reservations must be made by Friday, February 24, 2006 to obtain the special rate. Check-in time is 3:00 p.m. Check-out time is 12:00 noon.

Transportation The hotel is located approximately 11 miles from the Austin Bergstrom International Airport in the heart of downtown Austin. Super Shuttle Austin provides transportation to and from Austin Bergstrom International Airport – for reservation and questions call (800) 258-3826. All major rental car providers are located in the terminal of Austin Bergstrom International Airport. Additionally, Enterprise Rent-A-Car has an office in the Austin Centre adjoining the hotel.

Future Meeting Locations and Dates

The fall 2006 meeting of the LLW Forum will be held at Marco Island, Florida on September 18 – 19 and is being sponsored by the Southeast Compact.

The winter 2007 meeting will be held in San Diego, California on March 19 – 20 and is being sponsored by the Southwestern Compact. The fall 2007 meeting will be in a location, to be determined, in the Central Midwest Compact region and is being sponsored by the compact.

For additional information, contact Todd D. Lovinger, the LLW Forum's Executive Director, at (202) 265-7990.

Central Compact

Central Compact Postpones Decision on Boyd County Land

At a meeting on October 28, the Central Interstate Low-Level Radioactive Waste Compact Commission determined to delay action on how to dispose of 320 acres of land in Boyd County that was once designated to be the site for a regional low-level radioactive waste disposal facility. In so doing, commission members voted to seek an appraisal of the land and revisit the issue at its next meeting in January 2006.

The Village of Butte had previously agreed to accept the land should the commission decide to deed it to the village. In addition, Butte Mayor Cindy Schroetlin had previously asked the commission to award the village approximately \$4 million for economic and emotional hardship associated with consideration of siting a facility there. (The compact commission received a \$145.8 million settlement from the State of Nebraska in regard to a dispute over the state's review of a site application. All but \$15 million of the settlement has been paid out to utilities, US Ecology, and compact member states.)

At the commission meeting, however, at least one commissioner argued against donating the land ... which is estimated to be worth approximately \$160,000. The commissioner asserted that the land should instead be sold and the proceeds added to the settlement that the commission received from the State of Nebraska. (See *LLW Notes*, July/August 2005, p.6.) Other commissioners, however, argued that the property is of no value to the compact since it is located in a state that is no longer a member and should be donated to the village as a gesture of goodwill for their support of the compact's efforts to site a facility there.

The compact commission plans to reconsider the issue at its next meeting in January 2006.

Midwest Compact/State of Minnesota

Minnesota Seeks Agreement State Status

The U.S. Nuclear Regulatory Commission is considering a request from the governor of Minnesota to assume part of the agency's regulatory authority over certain nuclear materials in the state. In particular, the state is seeking to assume responsibility for licensing, rulemaking, inspection and enforcement activities for: (1) radioactive materials produced as a byproduct of processes related to the production or utilization of special nuclear material (SNM); (2) source material (uranium and thorium); and (3) SNM in quantities not sufficient to support a nuclear chain reaction.

If the request is accepted, Minnesota will become the 34th state to sign such an agreement with the NRC and approximately 167 NRC licenses—many of them for medical and industrial uses—would be transferred to Minnesota's jurisdiction. The NRC would retain jurisdiction over a number of activities identified in 10 CFR Part 150, including regulation of commercial nuclear power plants and federal agencies using certain nuclear material in the state. In addition, NRC would retain authority for the review, evaluation and approval of sealed sources and devices containing certain nuclear materials within the state.

Thirty-three other states have previously signed such agreements with NRC including Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Mississippi, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Texas, Utah, Washington, and Wisconsin.

An announcement about the proposed agreement, along with a summary of NRC staff's draft

(Continued on page 7)

Northwest Compact/State of Utah

Control Board to Consider Appeal of Envirocare's Expansion Request

Order Issued re Procedural Matters

At a meeting on October 19, the Utah Radiation Control Board determined to consider a formal appeal filed by Healthy Environment Alliance of Utah (HEAL Utah) in opposition to Envirocare of Utah's amendment request to expand its low-level radioactive waste disposal operations into section 29. In so doing, the board found that HEAL Utah has legal standing to challenge the Division of Radiation Control's decision to grant Envirocare a license amendment to double the size of its disposal site. Shortly thereafter, on November 8, Karen Langley, Chair of Utah Radiation Control Board, issued an order relating to the appeal. The order outlines procedural matters such as the terms of discovery, witness requirements and disposition of pre-hearing issues.

The Order

Discovery The order states that discovery—which shall take place in accordance with the Utah Rules of Civil Procedures unless modified by additional order of the presiding officer—will end on December 30, 2005. Responses to discovery requests shall be due no later than ten (10) calendar days after requests have been made.

Envirocare and the Executive Secretary may each serve a maximum of twenty (20) interrogatories, including subsections. HEAL may serve a maximum of twenty (20) interrogatories, including subsections, on the Executive Secretary and Envirocare.

Envirocare and the Executive Secretary may each serve a maximum of twenty requests for admissions, including subsections. HEAL may

serve a maximum of twenty (20) requests for admissions, including subsections, on Envirocare and twenty (20) requests for admissions, including subsections, on the Executive Secretary.

Witnesses The order states that each party shall file by December 15 a witness list identifying its expected fact and expert witnesses and a concise statement of the expected direct testimony of the witness, including reference to all facts and documents upon which the witness relies. A party naming an expert witness shall provide any expert report by January 10, 2006. In the event a party becomes aware after December 15 of additional information about which it wishes to have a witness testify, it shall file an amended witness list by January 10, 2006. Witnesses who have not been so designated will not be allowed to testify at the hearing.

All parties have the right to depose any and all witnesses designated by any other party in discovery or identified on the witness lists. In addition, any party may depose up to five (5) individuals not named as a witness with the exception of the person(s) representing the parties in the proceedings.

Interrogatories, Depositions and Motions The order states that any party proposing additional interrogatories, requests for admission, or depositions may do so only after approval by the presiding officer.

Envirocare, HEAL, or the Executive Secretary may file motions no later than January 10, 2006. Responses to any motion will be due within 10 days of filing of the motion as required by the board's rules. The board will consider motions that are timely filed at its January 6, 2006 meeting.

Hearing If board rulings of motions have not resolved the Request for Agency Action, a hearing will be conducted by the board on February 3, 2006. The hearing shall commence with HEAL presenting its case first, followed by Envirocare's responsive case, and the Executive Secretary's

States and Compacts *continued*

responsive case. Parties may file a pre-hearing brief no later than January 20, 2006.

Background

HEAL Utah's appeal challenges an August 2005 decision by the Utah Division of Radiation Control to grant a preliminary license for the 536-acre expansion into adjacent land that the new owners of Envirocare purchased earlier this year from Cedar Mountain Environmental, a potential competitor headed by former-Envirocare President Charles Judd. In particular, the administrative appeal calls for more information on the quantity of waste that would be disposed in the expanded area as well as the type of waste, its origins and "the schedule for developing disposal sites, and how disposal sites will be constructed."

Envirocare unsuccessfully lobbied to have the expansion considered during a special session of the legislature in April, but received the preliminary approval anyway. The preliminary approval requires the company to provide regulators with technical data and get a final approval prior to constructing specific facilities. In addition, approval from the legislature and governor are also required under Utah law.

On October 7, in response to a request for expedited consideration by Envirocare, an emergency meeting of the Utah Radiation Control Board was held to establish a schedule for administrative proceedings relating to the formal appeal. During the course of the meeting, the Board set forth a schedule that called for written pleadings to be concluded by October 14 in preparation for a hearing regarding "standing only" that was subsequently held on October 19.

Under Utah law, the Governor and legislature must approve the license amendment request relating to the company's expansion plans.

Legislative Action

At the October 19th meeting of the Natural Resources, Agriculture, and Environment interim

committee, the agenda item entitled "Resolution Approving Expansion of Commercial Radioactive and Mixed Waste Facility" was withdrawn by the sponsor, Rep. James Gowans (D) of Tooele County, due to the ongoing deliberations of the Radiation Control Board on standing that were occurring at the same time.

For additional information, contact Bill Sindair, Deputy Director, Utah Department of Environmental Quality, at (801) 536-4405.

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assessment of the Minnesota program, were published for comment once a week for four consecutive weeks in the *Federal Register* beginning in November. Comments may be sent to Michael T. Lesar, Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

Copies of the proposed agreement, the governor's request and supporting documents, as well as the NRC staff's assessment are available through the NRC's Agency-wide Documents Access and Management System (ADAMS).

(Continued from page 1)

The Governor's Position

Mike Mower, the Governor's Deputy Chief of Staff, was quoted in the local press as saying that Governor Huntsman was clear when running for office "that Utah shouldn't become a dumping ground." Also, the Governor opposed Envirocare's earlier efforts to accept Class B and C low-level radioactive waste and lobbied the federal government to move the Atlas Corporation uranium mill tailings from the Colorado River's edge. Indeed, the Governor continues to fight plans by Private Fuel Storage, LLC—a consortium of seven utility companies—to store spent fuel on

the Skull Valley Band of Goshute Indians Reservation.

The Governor “felt that he had received a great deal of information about this, but it is a core issue,” said Mower. “At the end of the day, he makes his own decision about what he thinks is right for Utah.”

Envirocare’s Response and Options

Tim Barney, Senior Vice President for Envirocare, expressed the company’s disappointment at hearing the news of the Governor’s plans to reject the expansion request. “For him to ask us to go through the [expansion licensing] process and tell us he would make up his mind at the appropriate point in the process, and then for him to make up his mind now is premature and very disappointing,” Barney told the local press.

Envirocare can continue to pursue the license amendment through the appeals process ongoing with the Radiation Control Board. Envirocare could receive a final approval from the Executive Secretary of the Board if the decision was upheld. The license amendment implementation would be contingent on approval by both the legislature and the Governor. The legislature may choose to give its approval independently. Envirocare could also scale-down its expansion request by not requesting additional future disposal capacity in an effort to get legislative and gubernatorial approval.

According to Envirocare officials, the company can continue disposing of low-level radioactive waste at the current rate for another 15 – 20 years before its disposal cells are filled.

For additional information, contact Bill Sinclair, Deputy Director, Utah Department of Environmental Quality, at (801) 536-4405 or Tye Rogers, Vice President of Compliance and Permitting, Envirocare of Utah, at (801) 532-1330.

Northwest Compact/State of Utah

PFS Proposal Encounters New Hurdle

Recently, Senator Orrin Hatch (R-UT) released three letters in a multi-pronged attack against a proposal by a consortium of seven nuclear utilities—Private Fuel Storage, LLC (PFS)—to build a temporary storage facility for spent nuclear fuel on the reservation of the Skull Valley Tribe of Goshute Indians in Utah.

One of the letters is from Glen Carpenter, manager of the Bureau of Land Management’s (BLM) office in Salt Lake City. In the letter, Carpenter asserts that he cannot approve a revision of the land resource management plan that is needed to allow PFS to build a railroad spur to the proposed repository site due to a Congressional moratorium on land-use planning. The effect of the moratorium, whose language was added to a defense bill in 2000 by Representative Jim Hansen (R-UT), is to require that the Air Force study whether the proposed repository would impair the Air Force’s use of the adjacent Utah Test and Training Range before BLM may sign the agreement. Congress has not allocated any money for the Air Force to conduct the study, however, and the Air Force has not chosen to do so on its own. As a result, Carpenter says BLM cannot sign the required agreement unless the study is conducted or the moratorium is lifted.

A second letter released by Hatch was from Sameul Bodman, Secretary of the U.S. Department of Energy. The letter states that DOE can’t provide funding or financial assistance for the proposed PFS facility and that “the facility initiative is not part of the department’s overall strategy for the management of spent nuclear fuel and high-level radioactive waste.” It also emphasizes that if DOE’s planned Yucca Mountain repository is built, it “will reduce, if not eliminate, the need for high-level radioactive waste to go to a private temporary storage facility in Utah.”

States and Compacts *continued*

The third released letter was from Hatch himself to the U.S. Nuclear Regulatory Commission. The letter requested that NRC not issue a license before all affected agencies, including the BLM, has signed a memorandum of agreement asserting that the project complies with cultural resource protection rules. The letter states that it would be “entirely inappropriate” for NRC to license the plant before the relevant agencies have satisfied their legal and regulatory requirements under the National Historic Preservation Act.

NRC’s Recent Decision

On September 9, the U.S. Nuclear Regulatory Commission denied the final appeals of the State of Utah in adjudication of PFS’ application to construct and operate the independent spent nuclear fuel storage facility. In so ruling, NRC upheld a February 24 decision by the Atomic Safety and Licensing Board (ASLB) that rejected Utah’s contention that the license application should be denied because there is too high a probability of a radiation release resulting from an accidental crash of one of 7,000 flights over the Skull Valley each year by F-16 single-engine jets from Hill Air Force Base. By a 3 to 1 vote, the Commission authorized staff to issue PFS a license once the requisite findings are made under NRC regulations. (See *LLW Notes*, September/October 2005, p. 25-26.)

In response, Utah Governor Jon M. Huntsman, Jr.—who has been a strong and constant opponent of PFS’ plans—immediately issued a press release expressing his disappointment at the NRC decision to deny what he labeled the state’s “safety-related objections” to the plan while affirming his commitment to utilize “all means at his disposal” to stop the project from moving forward. Huntsman’s press release vowed that the state would oppose PFS’ efforts on several fronts including challenging the NRC’s licensing decision in the courts, attempting to persuade Congress to pass federal legislation to block the proposal, and working to persuade two other federal agencies—the Bureau of Indian Affairs and the Bureau of Land Management—to kill the plan by withholding necessary regulatory approval.

Background

PFS submitted its application for the license in June 1997. The NRC issued its final Environmental Impact Statement in January 2002 and a Consolidated Safety Evaluation Report in March 2002.

PFS seeks to locate its facility on the reservation of the Skull Valley Band of Goshute Indians—about 50 miles southwest of Salt Lake City. The proposed above-ground facility would use up to 4,000 NRC-approved Holtec International HI-STORM 100 storage casks, each of which can hold up to 10 tons of spent fuel. The HI-STORM cask consists of a steel canister in which the fuel is stored and a steel and concrete overpack. To shield the spent fuel, the canister is welded closed and then placed in the overpack of two steel shells encasing a wall of concrete more than two feet thick. The concrete provides additional shielding from radiation during storage. The cask weighs 180 tons when full.

Next Steps

Separate from the BLM’s approval of the land resource management plan, the Bureau of Indian Affairs must issue final approval of the lease between the company and the Skull Valley Band of Goshute Indians and NRC must issue the final license to construct and operate the facility.

Rocky Mountain Compact/State of Colorado

Adams County Submits Comments Opposing Deer Trail Proposal

On October 26, the Adams County Colorado Board of County Commissioners ("Adams County") submitted comments and supporting materials through a law firm in response to a Notice of Public Comment issued by the Colorado Department of Public Health and Environment ("CDPHE") on August 26, 2005. The notice which is the subject of the letter refers to CDPHE's proposal to renew the hazardous waste treatment, storage and disposal permit of the Clean Harbors Deer Trail Facility and to issue the facility a limited radioactive materials license that would authorize it to accept at least 16,000 cubic yards of radium processing wastes.

Background

In January 2005, the State of Colorado received from Clean Harbors a radioactive materials license application that proposes the disposal of Naturally Occurring Radioactive Materials (NORM) and Technologically Enhanced Naturally Occurring Radioactive Materials (TENORM) at the company's Deer Trail Facility. CDPHE accepted public comment on the radioactive materials license application through May 31, 2005.

In early May 2005, the State of Colorado submitted an application to the Rocky Mountain Low-Level Radioactive Waste Board for the designation of the Clean Harbors Deer Trail facility as a limited regional low-level radioactive waste disposal facility. The application submitted to the board was limited to wastes from mining, milling, smelting or similar processing of ores and mineral-bearing material primarily for radium. The Rocky Mountain Board began consideration of the application, which can be viewed on the Board's web page at

www.rmlwb.us, at a meeting on May 27, 2005. The meeting was open to members of the public and other interested parties. At a meeting on June 8, the Rocky Mountain Board designated the Clean Harbors Deer Trail Facility as a limited regional disposal facility—subject to specified terms and conditions. (See *LLW Notes*, May/June 2005, pp. 17.)

The County Commissioners' Letter

In the letter, Adams County expresses its objection to the issuance of a final permit and final radiation materials license on the terms and conditions outlined in draft documents earlier released by CDPHE. In so doing, the county asserts three primary reasons—among other grounds—for denying Deer Trail's application.

- (1) According to the county's letter, the Colorado Hazardous Waste Siting Act requires Clean Harbors to obtain a certificate of designation from Adams County before a hazardous waste treatment, storage and disposal permit may be issued to the company. The same act, according to the letter, requires that any substantial changes in the ownership, design or operation of the facility must be submitted to the county for approval prior to becoming effective. The certificates of designation previously issued by the county expressly prohibit the disposal of Polychlorinated Biphenyls ("PCBs") and radioactive waste. The new permits, however, would allow the facility to accept these waste streams that were expressly prohibited by the county. The revision, asserts the county, constitute a "substantial change" in operation of the facility that requires the county's approval. In addition, the county claims that the Rocky Mountain Board's approval of the Deer Trail Facility as a "regional facility" requires the county to issue a certificate of designation prior to such designation becoming effective.

- (2) Adams County contends that the less stringent hazardous waste procedures and standards of the Colorado Hazardous Waste Act have been substituted for the more stringent radioactive waste procedures and technical standards of the Radiation Control Act resulting in CDPHE's failure to follow the statutory mandates for issuing a draft radioactive materials license.
- (3) Adams County asserts that CDPHE and Clean Harbors unlawfully created a new radioactive waste definition, "regulated materials," without complying with the rulemaking procedures required by the Colorado Administrative Procedures Act.

Based on the above contentions, Adams County is requesting that CDPHE deny the draft permit and draft radioactive materials license for the Deer Trail Facility. In the event that CDPHE does not deny them, Adams County requests that CDPHE hold two public hearings, require Clean Harbors to answer submitted questions, and require Clean Harbors to seek an amendment to the existing certificate of designation from Adams County and to seek a new certificate.

For information on activities of the Rocky Mountain Board, contact Leonard Slosky, Executive Director of the Rocky Mountain Board, at lslosky@rmlwb.us or (303) 825-1912.

Texas Compact/State of Texas

Texas Denies WCS Petition to Request Low-Activity Exemptions

WCS Responds with Amended Request; American Ecology Opposes Petition

On October 19, Waste Control Specialists filed an amended petition with the Texas Health and Human Services Commission requesting that the Department of State Health Services amend its rules to allow very low-level radioactive material that the U.S. Nuclear Regulatory Commission has exempted from its regulations to likewise be treated as exempt material in Texas. The amended petition is intended to address concerns raised by the state in its denial of WCS original petition, which was much broader in scope.

One month later, on November 22, American Ecology submitted a letter opposing the amended petition. In the letter, American Ecology asserts that "[o]utside of a technical change limiting the non-reviewable exemptions to Nuclear Regulatory Commission (NRC) licensed waste, the revised petition has not changed its original policy intent to bypass State scrutiny."

Background

On August 30, the Texas Health and Human Services Commission sent a letter to Waste Control Specialist responding to the company's July 2005 petition for rulemaking requesting a revision to the Texas Administrative Code that would recognize exemptions for low-activity radioactive materials granted by the U.S. Nuclear Regulatory Commission, the U.S. Department of Energy, or the Texas Commission on Environmental Quality. The letter states that the department, after reviewing technical aspects of the requested change, has determined to deny the petition as submitted.

States and Compacts *continued*

The letter provides the following reasons for denying the petition:

- (1) There is no compelling reason to change the current policy of a 'case by case' review and rulemaking regarding exemption proposals. This provides for a DSHS technical review based on the specific sources of radiation, methodologies, and sites for disposal ... The State of Texas is ultimately responsible for proper disposal in Texas. Therefore, it is necessary for the state to ensure the proper criteria for disposal in this state are met.
- (2) The petition references material 'cleared' for alternate disposal. The United States NRC has a separate ongoing rulemaking effort concerning the clearance of material. The NRC commissioners recently voted unanimously to delay this rulemaking ... [I]t is appropriate to wait for the NRC to complete its rulemaking before considering the amendment of DSHS rules regarding the 'clearance of material' issue.
- (3) The petition references contaminated material exempted by the United States DOE. The DOE generates waste and is a self-regulating agency; therefore, it would not be appropriate to accept waste 'exempted' by the DOE.
- (4) The petition references contaminated material exempted by the DSHS or TCEQ. Health and Safety Code s.401.106(a) and the Memorandum of Understanding with TCEQ ... clearly state that only the Health and Human Services Commission (HHSC), through its rulemaking authority for the DSHS, has the jurisdiction to exempt sources of radiation from the licensing requirements in Chapter 401, not the TCEQ. It is inappropriate for the submitted language regarding exemptions by the TCEQ to be included in the rule.

- (5) The petition proposes that hazardous waste disposal facility operators be required to perform certain duties. The TCEQ is the Texas agency with jurisdiction over hazardous waste disposal facilities. Neither the DSHS nor the HHSC have the jurisdiction to adopt requirements for hazardous waste disposal facility operators.

Despite denial of WCS' petition, the letter states that DSHS staff will begin discussions—to include stakeholders such as WCS—regarding possible rulemaking involving the issue of waste exemptions raised in the petition. The letter goes on to state that “[s]hould a consensus evolve regarding these issues, rulemaking will be started through the usual public rulemaking process.

Amended Petition

In the amended petition, WCS asserts that the second, redefined rulemaking proposal addresses the concerns expressed in the denial of the initial petition. “WCS’ current rulemaking proposal, which is narrower in scope, protects human health and the environment, and is necessary to make Texas regulations consistent with the NRC’s regulations as required by the 1963 Agreement State Agreement between the State of Texas and the Atomic Energy Commission,” states WCS. “That Agreement states that both the federal government and the State of Texas ‘recognize the desirability of reciprocal recognition of ... exemption from licensing of those materials subject to this Agreement.’”

WCS goes on to assert that its proposal will eliminate duplicative regulation by the state—thereby reducing state costs, enhancing regulatory efficiency and enhancing the business environment in Texas—and could generate new state revenue. WCS claims that its proposed rulemaking is in the national interest because it will promote disposal over storage and is based on risk rather than the origin or legal classification of the material.

States and Compacts *continued*

Opposition Letter

In the November 22 letter, American Ecology states as follows:

American Ecology continues to take the position that State review and concurrence with NRC-exempt waste disposal at RCRA facilities is advisable. While NRC regulates the generator of the waste, it does not regulate the receiving disposal facility. The NRC, therefore, lacks both detailed knowledge of facility permit requirements and cumulative information on the types and amounts of material previously disposed at the site.

Decommissioning wastes, for example, typically consist of soil, debris, concrete and other materials with low levels of radioactivity. The volumes are sufficiently large to contain significant quantities of radioactive material, particularly if multiple projects accumulate at one disposal site.

Accordingly, American Ecology recommends that the state require certain minimum information as part of a review and concurrence process, including a description of the waste (i.e., volume, physical form, radiological characteristics), NRC exemption documentation and related findings, and impact assessment and safety findings for the specified waste proposed.

In the letter, American Ecology notes that the Texas Commission on Environmental Quality recently modified the WCS permit to require DSHS concurrence with disposal of materials exempted by rule under chapter 25 of the Texas Code and 10 CFR Parts 30 and 40. As a result, American Ecology argues that “[i]t would be inconsistent to allow materials exempted by the NRC on a case-by-case basis to be disposed of without DSHS concurrence when the State RCRA permit requires DSHS concurrence for disposal of generally exempted materials.

Finally, in support of its position, American Ecology references a provision of the Atomic Energy Act of 1954, as amended, which references state authority to regulate NRC exempt waste. The provision states as follows:

No provision of this Act, or of the Low-Level Radioactive Waste Policy Act, may be construed to prohibit or otherwise restrict the authority of any State to regulate, on the basis of radiological hazard, the disposal or off-site incineration of low-level radioactive waste, if the Nuclear Regulatory Commission, after the date of the enactment of the Energy Policy Act of 1992 exempts such waste from regulation.

Sierra Club v. Chem-Nuclear Systems, Inc.

Judge Refuses to Rescind Barnwell Permit

In late October, an administrative law judge refused a request by the Sierra Club to rescind the permit of Chem-Nuclear Systems, Inc. to operate the Barnwell low-level radioactive waste disposal facility in South Carolina. The environmental group had challenged the company's permit, arguing that Chem-Nuclear needs to change the way it handles its incoming waste because of the detection of tritium in trenches as far back as 1974. Although the gas emits only weak levels of radiation that leave the body quickly, the group charges that tritium exposure may increase the risk for cancer.

In his ruling, the administrative law judge acknowledges that there may be concerns and notes that the company's vaults "are not sealed against water intrusion." When rainfall accumulates in the trenches, it eventually percolates to the soil and "drives the groundwater movement that is carrying tritium and other radioactive materials" into a nearby creek, he wrote. However, he found that the Sierra Club failed to meet the burden of proof that would lead him to rescind the company's permit.

He did rule, nonetheless, that Chem-Nuclear must study ways to improve its disposal practices. In particular, he ordered the company to evaluate whether it is feasible to make changes that would keep rain out of its underground disposal trenches and provide temporary dry storage facilities for radioactive waste received during wet weather. They must also consider sealing concrete containers, or vaults, to limit water intrusion. A company-funded study on the issue is due by early April 2006.

A company spokesperson said that Chem-Nuclear is "more than happy to comply" with the judge's order and noted that the company has changed its practices over the years so that it no longer puts

waste packages into trenches, but rather into concrete vaults before they are buried. "We feel the site has been operated safely," the spokesperson told local press.

A Sierra Club attorney was quoted in the local press as expressing disappointment in the ruling because it provides no recourse if the company fails to follow through and adequately address environmental concerns. According to the attorney, the Sierra Club plans to appeal the decision to the Department of Health and Environmental Control.

Private Fuel Storage v. State of Utah

Supreme Court Won't Hear Utah's Appeal of PFS Rulings

On December 5, the U.S. Supreme Court announced, without comment, that it will not consider an appeal filed by the State of Utah of an August 2004 ruling by the U.S. Court of Appeals for the Tenth Circuit that upheld a lower court decision striking down several state laws erected 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 State of Utah had filed a petition for a writ of certiorari in the U.S. Supreme Court on October 31, 2004. (See *LLW Notes*, November/December 2004, pp. 14 – 16.)

The Issues

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

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.)

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."

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 pre-empted the entire field of nuclear safety." While the court recognized that state's do have some jurisdiction over nuclear issues, it found that the Utah laws fall squarely within that area reserved for federal oversight by the U.S. Nuclear Regulatory Commission. The ruling struck down 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 as well as 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 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."

Response, Next Steps and Other Hurdles

The Bush administration's solicitor general filed a brief in the case in September arguing that the Court should not hear the case. The government's brief represented a substantial blow to Utah's case.

"We had concluded that our odds were fairly low on this," said Mike Lee, counsel to Utah Governor Jon Huntsman, Jr. Noting that the court hears very few cases, Lee added that "[t]he Governor is disappointed ... but not terribly surprised."

NRC authorized the PFS license request in September. The state is, nonetheless, continuing to fight the proposed storage site both in Congress and the courts. The state has filed a case challenging the NRC's license approval in the U.S. Court of Appeals for the District of Columbia Circuit. The state is also seeking wilderness designation of land in the area, which would prohibit development, and is fighting Bureau of Land Management action needed to allow a rail line to the area and Bureau of Indian Affairs approval of a lease for PFS.

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

U.S. Government Accountability Office

GAO Asked to Study Ways to Improve LLRW Management

The U.S. Government Accountability Office (GAO) was recently asked by the U.S. Senate Committee on Energy and Natural Resources to undertake a study to examine ways to improve the management of low-level radioactive waste in the United States. According to GAO staff, the Committee noted in its request that the U.S. Nuclear Regulatory Commission and others have raised concerns about the reliability and cost-effectiveness of the current disposal system.

GAO does not yet have a projected completion date for the study, but does not anticipate that it will be completed until mid-2006. GAO staff plan "to speak with domestic, foreign country, and international experts in radioactive waste management to help ... identify best management practices that, on further examination, could improve the reliability and cost-effectiveness of the system." According to GAO, "the need for change is driven, in part, by uncertainties regarding future disposal availability, but there are other considerations as well."

Advisory Committee on Nuclear Waste

ACNW Discusses Draft LLRW White Paper at November Meeting

The U.S. Nuclear Regulatory Commission's Advisory Committee on Nuclear Waste held a public meeting November 14 - 16 in Rockville, Maryland. Among other items on the agenda, members discussed a draft white paper on low-level radioactive waste management that the committee is developing for the Commission.

The ACNW will next meet on December 13 - 15. The draft LLRW white paper is on the agenda for the 13th from 1:00 - 4:00 p.m., as well as at various points later in the meeting.

The Draft LLRW White Paper

Outline of Draft Paper For approximately 30 minutes, the committee discussed its work on a draft white paper on low-level radioactive waste management and disposal. Although the paper is not currently publicly available, an outline of the draft white paper was provided. The paper, in its current format, has three main parts:

PART 1: LLW Program History

PART 2: NRC LLW Regulatory Framework

PART 3: ACNW Observations and Recommendations

The first part, LLW Program History, is expected to include sections on (1) early approaches to the management of LLW including ocean disposal, land disposal and early performance issues; (2) Congressional actions including NRC and 10 CFR Part 61 and the Low-Level Radioactive Waste Policy Act of 1980 and its 1985 amendments; (3) efforts to site new LLW disposal facilities; and, (4) current program status.

The second part, NRC LLW Regulatory Framework, is expected to include (1) an introduction; (2) a section on the approach to developing Part 61 including who should be protected, what should be the level of protection,

scoping activities, and the assumed definition of safety; and, (3) a section on other regulatory guidance including LLW guidance and strategic planning.

ACNW members reported that the first and second part are approximately 90% complete and that they expect to have a draft out for comment in December. Work has not yet begun on the third part. Deliberations on that part, ACNW observations and recommendations, will be held during the ACNW meeting in December.

Appendix to Draft Paper ACNW members announced that they plan to include an appendix with the paper that currently is expected to include (1) the structure of 10 CFR Part 61, (2) the final Commission policy statement on the use of PRA methods in nuclear regulatory activities, (3) regulatory evolution of the LLW definition, and (4) past ACNW advice and recommendations in the area of LLW. Committee members are also considering including a 1993 NRC document titled "Potential Candidate Areas to Amend 10 CFR Part 61."

Other Information There were a handful of persons in attendance to observe the proceedings and Alan Pasternak of the CalRad Forum participated via conference call. The committee indicated that the document is intended more as a historical tool and a reference guide to where things currently stand rather than as a mechanism to propose changes or alternative solutions. The focus of the paper is on the regulations rather than the setting of policy.

The paper is due to the Commission on December 31.

Other Agenda Items

Other items presented during the two and one half day meeting included observations from the U.S. Environmental Protection Agency on public comments regarding the agency's proposed amendments to the Yucca Mountain radiation protection standards, NRC's plans for the implementation of a dose standard after 10,000 years for Yucca Mountain, work being performed by Sandia National Laboratories on radionuclide sorption in soils and its impact on reactive

transport, and demonstrations of the generalized composite approach to the modeling of reactive transport. In addition, ACNW members discussed various draft letters that the committee is preparing or considering preparing on a variety of topics including implementation of Part 63, waste determination, West Valley performance assessments, public outreach efforts, igneous activity, and waste safety research programs.

ACNW Background

"The Advisory Committee on Nuclear Waste (ACNW) was established by the Commission in June 1988 to provide independent technical advice on agency activities, programs, and key technical issues associated with regulation, management, and safe disposal of radioactive waste. The ACNW interacts with representatives of the NRC; the Advisory Committee on Reactor Safeguards; other Federal, State, and local agencies; Indian tribes; the public; and other stakeholders, as appropriate, to fulfill its responsibilities. The bases for the committee's advice include the regulations governing high-level waste disposal, low-level waste disposal, and other applicable regulations and legislative mandates. The ACNW examines and reports on areas of concern as requested by the Commission and may undertake studies and activities on its own initiative, as appropriate. The ACNW is independent of the NRC staff and reports directly to the Commission, which appoints its members. The operational practices of the ACNW are governed by the provisions of the Federal Advisory Committee Act (FACA). Advisory committees are structured to provide a forum where experts representing many technical perspectives can provide independent advice that is factored into the Commission's decisionmaking process."

For additional information on the meeting contact Sharon Steele, at 301-415-6805.

A complete agenda is available on the NRC's Web site at: <http://www.nrc.gov/reading-rm/doc-collections/acnw/agenda/2005/>.

Atomic Safety and Licensing Board

ASLB Holds Hearing re Proposed Enrichment Facility

The Atomic Safety and Licensing Board—an independent advisory board to the U.S. Nuclear Regulatory Commission—held an evidentiary hearing from October 24 - 27 in Rockville, Maryland concerning the application of Louisiana Energy Services (LES) to construct and operate a gas centrifuge uranium enrichment facility in Lea County, New Mexico. The hearing, most of which was closed to the public because it included testimony that is proprietary, focused on technical contentions filed by the Nuclear Information and Resource Service (NIRS) and Public Citizen challenging the LES application. These contentions pertain primarily to costs associated with facility decommissioning and the disposal of depleted uranium tails created by the enrichment process.

As part of the licensing process, NRC regulations require the Board to conduct an additional evidentiary hearing to assess environmental and technical matters that were not raised by intervening party challenges to the LES application. The Board currently expects to conduct this public hearing in Lea County in March 2006, including one or more "limited appearance" sessions during which members of the public will be able to present the Board with their views on the LES license application.

U.S. Nuclear Regulatory Commission

NRC Holds Public Meeting re NARM Authority

Agency Creates Web Site re Rulemaking Activities

On November 9, the U.S. Nuclear Regulatory held a roundtable discussion to seek input on a new rulemaking to extend the agency's regulatory authority over accelerator-produced radioactive

material and certain discrete sources of naturally occurring radioactive material. The meeting, which was open to the public, was held at the agency's headquarters in Rockville, Maryland. In addition, the agency has created a web site to address NARM rulemaking activities that is available through the agency's homepage.

The Meeting In announcing the meeting, NRC stated as follows:

"The Energy Policy Act of 2005 gave the NRC regulatory authority over additional radioactive materials, including accelerator-produced radioactive material and any discrete source of radium-226 that is produced, extracted or converted after extraction for use in commercial, medical or research activities. NRC authority also can be extended over naturally occurring radioactive material that the Commission, in consultation with other federal agencies, determines is a threat to public health and safety or the common defense and security."

The purpose of the meeting was to solicit input from stakeholders for a proposed rule. Participants at the table included "invited representatives of the broad spectrum of interests potentially affected by this rulemaking, such as state regulatory agencies and members of the nuclear medicine and radio-pharmaceutical industries." Audience observers were given the opportunity to comment and ask questions, as well.

The Web Site The link to get to the precise location on NRC's web site regarding NARM rulemaking activities is as follows:

<http://ruleforum.llnl.gov/cgi-bin/rulemake?source=narm&st=ipcr>

In addition to background information on the inclusion of NARM within the Energy Policy Act of 2005, the transcript from the November 9 stakeholder meeting is also available.

For additional information, please contact Jenny Tobin of the NRC at jct1@nrc.gov or at (301) 415-2328.

Groups Challenge Classification of Depleted Uranium Waste

Decision Could Impact Envirocare

The Atomic Safety and Licensing Board (ASLB) -- an independent advisory group to the U.S. Nuclear Regulatory Commission -- recently held a hearing to address the cost of decommissioning a uranium enrichment facility that Louisiana Energy Services (LES) is proposing to build in Lea County, New Mexico "and the disposal of uranium tails created by the enrichment process." During the course of the hearing, the board considered claims by two groups (Public Citizen and the Institute for Energy and Environmental Research) that depleted uranium should not be considered Class A low-level radioactive waste. (The proposed LES facility could generate significant quantities of depleted uranium waste during its 30-year life.) Instead, they contend that depleted uranium is more dangerous than other material in that classification and should be categorized as Class C low-level radioactive waste. A final decision on this issue is expected in February.

The decision may impact the Envirocare of Utah facility, which is one of only a handful of facilities that can accept depleted uranium. Envirocare has accepted depleted uranium in the past and could accept LES waste if the classification remains the same. If the classification is changed, however, Envirocare may be barred from accepting depleted uranium from the proposed LES plant since its license only allows the facility to accept Class A waste. To date, Envirocare has accepted just over 100,000 cubic feet of depleted uranium. According to Tim Barney, Senior Vice President, "that's less than one-half of 1 percent of the volume we've received here to date of other material."

Depleted uranium has been categorized as Class A waste by the NRC. The agency did not evaluate the disposal of large quantities of depleted uranium in its final environmental impact statement. The State of Utah, however, did an in-depth safety analysis of the disposal of large quantities of depleted uranium as part of the licensing of Envirocare.

For additional information, please contact Tim Johnson of the NRC at (301) 415-7299.

McGaffigan Reappointed to NRC

On October 12, Edward McGaffigan, Jr. was sworn in for an unprecedented third term as a commissioner of the U.S. Nuclear Regulatory Commission. (McGaffigan's first term began August 28, 1996.) His current term will expire in June 2010. His reappointment by President Bush and confirmation by the Senate brings the NRC to its full complement of five commissioners.

Prior to his appointment to the Commission, McGaffigan served as a legislative assistant, then legislative director, and finally senior policy advisor to Senator Jeff Bingaman (D-NM). McGaffigan supported the Senator's work on defense policy, technology policy, personnel and acquisition reform, and nonproliferation and export control policy.

Prior to his Senate work, McGaffigan was a member of the Foreign Service, worked in the White House Office of Science and Technology Policy, and staffed the National Security Council. He also carried out various assignments within the State Department and was stationed as a science attaché in the U.S. Embassy in Moscow. And, finally, he previously worked at the RAND Corporation and on strategic arms control issues at the Arms Control and Disarmament Agency. He holds a bachelor's degree in physics from Harvard University and master's degrees in physics from the California Institute of Technology and public policy from Harvard's Kennedy School of Government.

License Renewals Continue to Move Forward

On November 17, the U.S. Nuclear Regulatory Commission held a public meeting to accept comment on a draft report that assesses the environmental impact of extending the operating license for Nine Mile Point Nuclear Station Units 1 and 2 in Scriba, New York. A public meeting was also conducted by the agency on November 1 regarding potential environmental impacts of relicensing the Oyster Creek Nuclear Generating

Station in Lacey Township, New Jersey. And, on November 3, the Atomic Safety and Licensing Board—an independent judicial arm of the NRC—heard oral arguments in the Palisades Nuclear Power Plant license renewal proceeding in South Haven, Michigan.

Nine Mile Plant

The Nine Mile Nuclear Power Plant is located in Scriba, New York. Constellation Nuclear submitted a license renewal application for the two units on May 27. The current operating licenses for Units 1 and 2 expire on August 22, 2009 and October 31, 2026, respectively. A draft Supplemental Environmental Impact Statement on relicensing of the plant was issued on September 30. The draft report contains NRC staff's preliminary recommendation that the Commission determine that the adverse environmental impacts of license renewal are not so great that preserving the option of license renewal for energy planning decision-makers would be unreasonable. Comments on the draft report were accepted at the November 17 meeting. The written comment period ended on December 22.

The Nine Mile renewal application can be found at <http://www.nrc.gov/reactors/operating/licensing/renewal/applications/nine-mile-pt.html>. The draft report is posted on the NRC web page at <http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1437/supplement24/index.html>.

Oyster Creek Nuclear Generating Station

On July 28, NRC announced that an application for a 20-year renewal of the operating license for the Oyster Creek Nuclear Station is available for public review. The Oyster Creek plant is located approximately nine miles south of Toms River, New Jersey. Its current operating license expires on April 9, 2009. The licensee, AmerGen Energy Company, submitted a renewal application on July 22. Subsequently, NRC held a public meeting in late August to discuss how the agency will review the application. In September, NRC staff determined that the application has sufficient information for the agency to formally "docket," or file, it and begin its technical review. On September

Federal Agencies and Committees *continued*

12, NRC announced the opportunity to request a hearing on the application. The November public meeting focused on any potential environmental impacts resulting from an extension of the plant's license. The environmental scoping process concluded on November 15. The findings of the environmental review will be published in a draft report due out next June. The public will then have an opportunity to comment on that report before issuance of the final version in January 2007.

A copy of the renewal application is available on the NRC's web site at <http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html>.

Palisades Plant

Nuclear Management Company submitted the Palisades Nuclear Power Plant renewal application on March 22. NRC held a public meeting on April 28 in South Haven, Michigan to discuss how the agency will review the application. The current license for the Palisades plant expires on March 4, 2011. If approved, the plant's NRC license would be extended for 20 years. During the November 3 ASLB hearing, the board considered oral arguments on the admissibility of issues raised by five organizations and 31 individuals who requested a hearing on the proposed renewal and petitioned to intervene in the proceeding. (The five organizations that submitted the request for a hearing and petition to intervene on August 8 included the Nuclear Information Resource Service, West Michigan Environmental Action Council, Don't Waste Michigan, Green Party of Van Buren County, and Michigan Land Trustees.) The board also received comments from interested members of the public, known as limited appearance statements.

A copy of the license renewal application is available for review on NRC's web site at <http://www.nrc.gov/reactors/operating/licensing/renewal/applications/palisades.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>

Opportunity for Hearing re KSU Research Reactor

In early October, the U.S. Nuclear Regulatory Commission announced the opportunity to request a hearing on an application to renew the operating license for the Kansas State University (KSU) Research Reactor for an additional 20 years. The reactor is located on the Kansas State campus in Manhattan, Kansas. The university submitted the renewal application on September 12, 2002, and supplemented the application on December 22, 2004, and July 6, 2005. The reactor's license would have expired October 16, 2002, but since the renewal application was filed before that point, the NRC will consider the license valid until the renewal application has been reviewed. NRC determined that the application contains sufficient information to formally "docket," or file, it and to begin a technical review. A notice of opportunity to request a hearing was published in the *Federal Register* on October 6 and the deadline for requesting a hearing was November 7.

New Reactor Licensing Clarifications

The U.S. Nuclear Regulatory Commission is considering revisions to clarify its regulations concerning the licensing and approval processes for nuclear power plants. The changes would address requirements that apply to licensing processes such as Early Site Permits (ESP), Design Certifications and Combined Licenses. The proposed rule changes are the result of experience gained in the NRC's review of ESP and Design Certification applications, as well as substantial public comments.

Federal Agencies and Committees *continued*

"This rule would clarify the relationship between Part 50 of our regulations and the processes available today in Part 52," said David Matthews, Director of the Division of New Reactor Licensing in the NRC's Office of Nuclear Reactor Regulation. "These changes would make the NRC's licensing process more effective and efficient for future applicants."

The proposed rule is described in a staff paper to the Commissioners that is available at <http://www.nrc.gov/reading-rm/doc-collections/commission/secys/2005/>. The proposed rule would supersede a 2003 proposal that the agency would withdraw. If approved, the new proposed rule would be published in the *Federal Register* for public comment.

For more information, contact Jerry Wilson or Nanette Gilles—both of the NRC—at (301) 415-3145 and (301) 415-1180 respectively or via email at jnw@nrc.gov and nvg@nrc.gov respectively.

Commission can reach a final decision on issuing the permit. The NRC expects to finish this process late in 2006.

The 400-page SER contains the agency's review of the Grand Gulf ESP application. The NRC staff reviewed information on

- ♦ site seismology, geology, meteorology and hydrology;
- ♦ risks from potential accidents resulting from operation of a nuclear plant at the site;
- ♦ the site's ability to support adequate physical security for a nuclear plant; and,
- ♦ proposed major features of the emergency plan System Energy Resources would implement if a reactor is eventually built at the site.

System Energy Resources will have 14 days to review the SER for proprietary information. The report will then be available electronically for public inspection in the NRC Public Document Room and on NRC's web site at <http://www.nrc.gov/reactors/new-licensing/esp/grand-gulf.html>.

SER Issued for Grand Gulf ESP

U.S. Nuclear Regulatory Commission staff has issued its final safety evaluation report (SER) for an Early Site Permit (ESP) for the Grand Gulf site, about 25 miles south of Vicksburg. System Energy Resources, Inc. filed the Grand Gulf ESP application on October 21, 2003. If approved, the permit would give the company up to 20 years to decide whether to build one or more nuclear plants on the site and to file an application with the NRC for approval to begin construction.

By using the ESP process, the applicant is able to address site-related issues, such as environmental impacts, for possible future construction and operation prior to filing a full application. Along with the SER, the staff must complete an Environmental Impact Statement, the Advisory Committee on Reactor Safeguards must issue a report on the ESP application, and the Atomic Safety and Licensing Board Panel must conclude its mandatory hearing on the matter before the

License Issued for Humboldt Bay Spent Fuel Installation

In mid-November, the U.S. Nuclear Regulatory Commission issued a license to the Pacific Gas & Electric Company (PG&E) to operate an independent spent nuclear fuel storage installation at its Humboldt Bay power plant site in California. The license is effective for 20 years and may be renewed, subject to additional NRC review and approval. PG&E intends to transfer all the remaining used nuclear reactor fuel from the Humboldt Bay Unit 3 spent fuel pool into dry casks. The new spent fuel storage installation will provide sufficient interim spent fuel storage capacity to support the continued decommissioning and dismantlement of the Humboldt Bay Unit 3 reactor, which has been permanently shut down since 1976.

The specific system to be used at Humboldt Bay consists of a steel canister that can hold up to 80 spent fuel assemblies and a steel “overpack” or cask, which holds the canister and provides additional shielding against radiation during transfer and storage at the site. The Humboldt Bay installation can accommodate five spent fuel storage casks containing up to 400 spent fuel assemblies and one additional cask to store other radioactive material. The six loaded casks will be placed in an in-ground concrete vault.

Dry cask storage is a proven technology, first used for commercial spent fuel in the U.S. in 1986. It is currently in use at 36 sites around the country. Dry cask storage systems incorporate passive design features so that safe operation does not rely on moving parts or active components.

The agency has also issued a Safety Evaluation Report for the proposed spent fuel storage installation, which summarizes the NRC staff’s extensive safety review of PG&E’s detailed analyses of the facility. These analyses include the potential effects on the installation from a wide range of natural and man-made hazards, such as flooding, lighting, fire, earthquakes, and explosions. The report describes the NRC staff’s conclusions that the storage installation proposed by PG&E conforms with statutory and regulatory requirements and will provide adequate protection of public health and safety and the environment.

PG&E applied for the license in December 2003. In addition to the safety review and environmental assessment by the NRC staff, the agency offered an opportunity for interested persons to request a formal adjudicatory hearing on the application; however, a hearing was not requested.

The Humboldt Bay independent spent fuel storage installation license, technical specifications, and Safety Evaluation Report can be found on the NRC’s web site at <http://www.nrc.gov/reading-rm/adams/web-based.html> using accession number ML053140041.

NRC Forms Hurricane Task Force

The U.S. Nuclear Regulatory Commission has formed a task force to continue assessing the preparations for and response to the 2005 hurricane season by the NRC, affected states, and licensees. Agency actions related to hurricanes Katrina and Rita and their effects on nuclear power plants in Louisiana and Florida will be the focus of the task force, although actions related to radioactive material licensees in areas that could have been, or were, affected by the severe weather will also be reviewed. The agency’s actions to monitor the storms, interact with state officials and work with nuclear facility operators licensed by NRC will be reviewed by the task force. The task force will make recommendations for improvements based on the review.

“Our response to this year’s hurricane season was very good. We are pleased with how our staff handled the storms and interacted with affected states and licensees,” said Melvyn Leach, the task force team leader and an official in the NRC’s Office of Nuclear Security and Incident Response. “We are always looking for ways to do better. We want to apply lessons learned here to incidents other than those involving hurricanes.”

As part of its mission, the task force will pay particular attention to the adequacy of primary and back-up communication systems linking the NRC, other government organizations and the licensees. The task force will also compare lessons learned from the 2005 hurricanes to observations related to 1992’s Hurricane Andrew to see if issues have recurred. Officials from numerous states will be asked to provide input to the task force, which is comprised of 10 staff members from headquarters and region offices.

The task force first met in early November and is expected to deliver a report with recommendations for improvements to the Executive Director for Operations in February 2006. Depending on the conclusions of the task force and direction from the Commission, regulatory changes or other actions could be proposed. The final report will be made public in the future.

NRC Seeks Comment re Oversight Process

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

In particular, NRC is seeking the public's answers to a list of 19 questions relating to the ROP, including whether (1) the information in the inspection reports is useful, (2) the ROP is understandable and the processes, procedures and products are clear and written in plain English, and (3) there has been ample opportunity for the public to participate in the ROP and provide input and comments.

All 19 questions are contained in the *Federal Register* notice of the request for comment, which was published on October 21 and can be found at <http://www.nrc.gov/nrr/oversight/assess/rop2005survey.pdf>.

The comment period runs until December 1. Comments may be emailed 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 Holds Meetings re SRP for Waste Determinations

The National Defense Authorization Act of Fiscal Year 2005 gave to the U.S. Nuclear Regulatory Commission new responsibilities regarding the U.S. Department of Energy's efforts to remediate certain waste at the Savannah River Site in South Carolina and the Idaho National Laboratory. In accordance therewith, the NRC has begun initial reviews and is developing a Standard Review Plan for non-high level waste determinations.

In addition, on November 10, NRC staff held a public meeting in Gaithersburg, Maryland to receive public input on the scope of the Standard Review Plan to be developed for conducting the agency's initial consultation and monitoring activities regarding non-high level waste determinations by DOE. The plan will describe the types of information that the agency will assess during its technical consultation and monitoring activities. The Standard Review Plan will include approaches for the two sites covered by the NDAA as well as West Valley, New York, and Hanford, Washington, where NRC may possibly perform similar reviews.

NRC Releases Saxton for Unrestricted Use

The U.S. Nuclear Regulatory Commission recently granted the request of Saxton Nuclear Experimental Corporation (SNEC) and GPU Nuclear to terminate the license for the Saxton Nuclear Facility—which is located in Bedford County, Pennsylvania and closed permanently in May 1972—and to release the site for unrestricted use.

Saxton began operations in November 1961, primarily to research various aspects of power reactor technology and to train personnel. After Saxton ceased operations, its spent fuel was shipped

to the Department of Energy's Savannah River Site. Limited decommissioning took place at Saxton from 1972 to 1974—with the site being monitored until 1987. Support buildings and structures were decontaminated and removed between 1987 and 1992. Full scale decommissioning started in 1998.

In February 2000, SNEC and GPU Nuclear submitted a license termination plan to the NRC. Cleanup and decommissioning activities—including dismantlement of the reactor and decontamination—continued until September 2005. On September 15, the licensees submitted an application to the NRC to terminate its license, indicating that they had completed radiological decommissioning and that final radiation surveys of the site show that it meets NRC criteria for decommissioning and for release for unrestricted use.

NRC conducted a number of on-site inspections of the licensee's actions during the decommissioning process to verify that decommissioning and cleanup were being conducted as described in the license termination plan and to evaluate the quality of this activity. The agency also conducted independent measurements to verify the company's final radiation surveys. NRC has concluded that (1) dismantlement and decontamination activities were performed in accordance with the approved license termination plan, and (2) the final radiation surveys and associated documentation demonstrate the facility and site have met the criteria for decommissioning in Part 20 of the Commission's regulations. Therefore, the license has been terminated.

NRC Seeks Public Comment re Security Revisions

The U.S. Nuclear Regulatory Commission is seeking public comment on a proposed rule that would amend its regulations governing the requirements pertaining to the design basis threat (DBT). The security regulations specify the DBT

that nuclear power plants and certain related facilities must be able to defend against with high assurance. The proposed rule—which, in part, addresses a petition filed by Committee to Bridge the Gap which requests that the DBT be amended to include attacks by air—includes requirements related both to radiological sabotage and to theft or diversion of strategic special nuclear material. The specific adversary characteristics related to the DBT are protected and are not publicly available.

NRC issued supplemental DBT requirements following a thorough review of security after the September 2001 terrorist attacks. The orders containing said requirements required nuclear power plants and "Category I fuel cycle licensees" to revise their physical security plans, security officer training and qualification plans, and contingency response plans. The orders resulted in revisions to the licensees' protection strategies that included increased guard patrols, additional physical barriers and better coordination with law enforcement and the military. The proposed rule would amend the NRC's regulations to, among other things, include supplemental security requirements previously imposed by the Commission's April 2003 DBT orders. The proposed rule would also define the level of security necessary to ensure public health and safety.

Comments must be received within 75 days of publication in the *Federal Register* to guarantee consideration by the NRC. Comments that are submitted late may be considered if practical. Comments should be mailed to: Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C., 20555-0001, Attn: Rulemakings and Adjudications Staff. Comments may also be faxed to (301) 415-1101 or e-mailed to SECY@nrc.gov.

Additional information about the DBT and security requirements for NRC licensees can be found at <http://www.nrc.gov/reading-rm/doc-collections/fact-sheets/safety-security.html>.

NRC Discusses Proposed Worker Changes

The U.S. Nuclear Regulatory Commission held two public meetings during November to discuss proposed improvements to the agency's fitness-for-duty requirements for workers who have unescorted access to a nuclear power plant's protected areas. The first meeting was held in Morris, Illinois on November 7; the second was held in Charlotte, North Carolina on November 9.

The meetings included separate discussions of the proposed changes to drug and alcohol-testing provisions and to proposed fatigue-management provisions. The public had several opportunities to ask questions throughout the meetings.

For a copy of the meeting agendas, go to <http://adamswebsearch.nrc.gov/idmws/ViewDocByAccession.asp?AccessionNumber=ML052990048>. For additional information, contact David Diec at (301) 415-2834 or dtd@nrc.gov.

Obtaining Publications

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

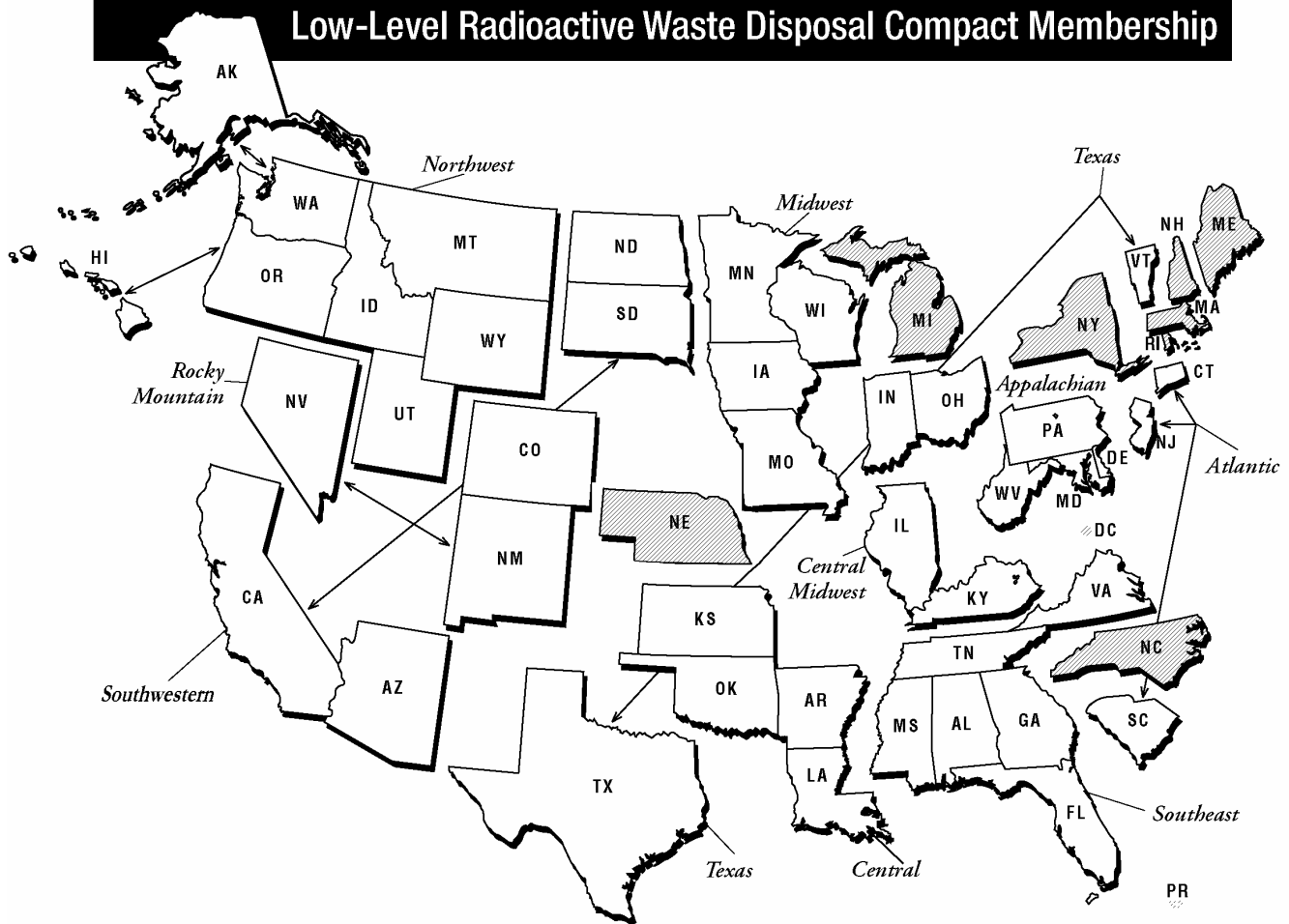
To access a variety of documents through numerous links, visit the web site for the LLW Forum, Inc. at www.llwforum.org

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
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New York
North Carolina
Puerto Rico
Rhode Island