LLW*notes*

Volume 21, Number 4 July/August 2006

U.S. Nuclear Regulatory Commission

NRC Extends Comment Period on LLRW Program

On July 27, the U.S. Nuclear Regulatory Commission announced that it is extending the public comment period for an additional 30 days—until September 5, 2006—on the agency's low-level radioactive waste program (71 *Federal Register* 42,677). NRC is conducting a strategic assessment of the program "to identify and prioritize activities that the staff can undertake to ensure a stable, reliable and adaptable regulatory framework for effective LLW management, while also considering future needs and changes that may occur in the nation's commercial LLW management system."

NRC originally announced that it was seeking public comment on the program on July 7, 2006 (71 *Federal Register* 38,675).

Background

NRC last conducted a strategic assessment of its low-level radioactive waste program in August 1995. In September 1996, NRC staff released an "Issues Paper" identifying various options that could be pursued. (The paper is available on NRC's Agencywide Document Management System under accession number ML061700297.) After reviewing the paper and public comments, the Commission decided to simply "maintain" the agency's program at its then-current level.

According to the July 7 *Federal Register* notice, NRC believes that new challenges, influences and issues now face the agency's program due to a number of developments in the national disposal system and regulatory environment over the past 10 years.

> Among these is the fact that several governmental and national technical organizations, as well as major stakeholder and industry groups, states and Congress, have raised questions or expressed opinions regarding the current status of regulation and disposal of radioactive waste in the U.S. Though many of these

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LLW Forum, Inc • 1619 12th Street, N.W. • Washington D.C. 20009
(202) 265-7990 • FAX (202) 265-7995 • E-MAIL llwforuminc@aol.com INTERNET www.llwforum.org

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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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Editor and Writer: Todd D. Lovinger
Layout and Design: Rita Houskie, Central Interstate Low-Level Radioactive Waste Compact

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

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LLW FORUM, INC

Low-Level Radioactive Waste Forum, Inc.
1619 12th Street N.W.
Washington, DC 20009
(202) 265-7990
FAX (202) 265-7995
E-MAIL llwforuminc@aol.com

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 Host Workshop re Problematic Waste Streams

The Low-Level Radioactive Waste Forum will hold its next meeting on September 18 – 19 at the Marriott on Marco Island, Florida. The Southeast Compact Commission for Low-Level Radioactive Waste Management is sponsoring the full two-day meeting. The second day of the meeting will end at 10:30 a.m. It will be immediately followed by an optional workshop devoted to addressing current problematic waste streams and post-2008 concerns should the Barnwell low-level radioactive waste disposal facility close to out-of-region waste as scheduled and no other alternative disposal options become available.

Post-2008 Workshop

The workshop on September 19 will include an interactive dialogue in the morning with generators, brokers and processors, disposal operators, state and compact officials, federal officials and other interested stakeholders identifying specific current and post-2008 concerns and problems. The afternoon will include a break-out session during which time meeting attendees will be separated into groups (pre-sorted for balance of backgrounds, geography, expertise, etc.) to brainstorm on potential mitigating actions or solutions. Each group will report their insights at the end of the meeting, after which all attendees will discuss potential next steps and/or further actions.

Registration

The meeting and workshop are free for members of the LLW Forum, Inc. Non-member registration for both is $500.00, payable to the "LLW Forum, Inc." (A discounted registration rate for the workshop only is also available.) Advance registration is required. Interested parties are encouraged to register early to ensure space availability. To obtain a registration form, go to the LLW Forum's web site at www.llwforum.org and click on the "Registration Form" link on the home page or call Todd D. Lovinger, the LLW Forum's Executive Director, at (202) 265-7990.

Hotel Reservations

A block of 50 rooms has been reserved for Sunday, September 17 through Wednesday, September 20 for meeting attendees at the special rate of $99.00 plus tax per night for single or double occupancy, plus a $6 per person per day service charge. A limited number of rooms are available at this special room rate three days prior to and after the meeting. It is highly suggested that reservations be made early in order to ensure availability. Reservations must be made by August 18 to obtain the special rate. To make reservations, please call (800) 438-4373 and ask for a room in the "LOW-LEVEL WASTE FORUM" block at the Marco Island Marriott Resort and Spa.

Future Meeting Locations and Dates

The winter 2007 meeting of the LLW Forum will be held in San Diego, California on March 19 – 20 at the Bahia Hotel. The Southwestern Low-Level Radioactive Waste Compact Commission is hosting the meeting. The fall 2007 meeting will be in a location, to be determined, in the Central Midwest Interstate Low-Level Radioactive Waste Compact region and is being sponsored by the compact.

The LLW Forum is currently looking for sponsors for the winter and fall 2008 meetings. Interested parties should contact Todd D. Lovinger, the LLW Forum's Executive Director, at (202) 265-7990.

Northwest Compact/State of Utah

Petition Opposes Disposal of Alternate Feed at White Mesa Mill

In early July, the Utah Division of Radiation Control granted an amendment request by International Uranium Corporation's (IUC) mill in White Mesa, Utah to accept 32,000 tons of alternate feed material from FMRI, Inc. in Muskogee, Oklahoma. Shortly thereafter, the Glen Canyon Group of the Sierra Club's nuclear waste committee filed a petition with the Utah Radiation Control Board requesting that the amendment request be invalidated and seeking a new adjudicative-type hearing over acceptance of the material. The board will meet on August 4 in Salt Lake City, at which time it will consider the environmental group's petition.

The Issues

The Sierra Club chapter filing the petition claims that the alternate feed material, also known as tailings, constitutes radioactive waste that poses a danger to the health of humans. In particular, they are concerned about thorium contained in the alternate feed. As thorium decays, it produces radon, which they claim could cause lung cancer in humans nearby.

They are requesting that a public hearing be held in Blanding, located about four miles from the mill. Usually, any such hearing would be held in Salt Lake City.

Background

IUC's White Mesa Mill A public hearing on the proposed amendment request was held in Blanding on January 5. At that time, the Division of Radiation Control listened and responded to public concerns about dangerous chemicals in the alternate feed and radon. In the end, the Division determined that the tailings could be disposed of safely.

IUC's White Mesa mill has received hundreds of thousands of tons of alternate feed material from at least four states and Canada over a period of more than 10 years. Each time the mill proposes to accept material from a source not listed in IUC's license, an amendment is required.

The State of Utah obtained oversight authority of uranium mills in 2004.

FMRI, Inc. FMRI, Inc. is a subsidiary of Fansteel, which until 1989 operated a "rare metal extraction" facility at the Muskogee site. In 2003, after Fansteel filed for bankruptcy, FMRI was set up to decommission the Muskogee facility and coordinate a $30 million site clean-up project.

Under the proposed amendment, IUC's White Mesa mill would extract uranium from material transported from the Muskogee site and store the remaining material in cells lined in retention ponds. The mill and its retention ponds are on private land surrounded by the White Mesa Ute Indian Reservation and land controlled by the Bureau of Land Management; however, more than 4,000 people live within 10 miles of the mill.

Texas Compact/State of Texas

TCEQ Issues List of Concerns to WCS

On June 30, 2006, the Texas Commission on Environmental Quality (TCEQ) issued a List of Concerns to Waste Control Specialists, LLC regarding the company's license application for near-surface disposal of low-level radioactive waste at a proposed site in West Texas. The list—which includes 13 attachments in total—describes in detail what information must be provided to the Radioactive Material Licensing Team to resolve specified concerns.

According to the letter transmitting the List of Concerns, "the issues discussed in the attached

documents need to be worked out" before the application can be considered complete. The letter states that a request for an extension of time to submit the identified information should be filed consistent with Texas statute by July 10, 2006.

List of Concerns

Eleven attachments accompanied the June 30 letter identifying specific concerns that must be addressed through the submittal of additional information before the application can be considered complete and the technical review can be finished. The eleven attachments address the following areas:

- general information
- site characteristics
- design
- construction
- operation
- closure
- post-closure and institutional care
- performance assessment
- quality assurance and quality control
- personnel
- financial qualifications and financial assurance

The general information attachment, in part, addresses issues related to two applications for exemption from TCEQ rules filed by WCS. The first application is a request for exemption from the federal facility land ownership requirements. The second application is a request for exemption from the mineral ownership requirements.

In addition, two attachments were sent under separate cover that describe needed information related to security and financial issues. Those attachments are labeled "confidential."

The List of Concerns is posted at http://www.tceq.state.tx.us/permitting/waste_permits/rad_waste/wcs_license_app.html

WCS Response

By letter dated July 7, 2006, WCS informed TCEQ that the company needs additional time to determine how long of an extension it will need in order to submit additional information to address the List of Concerns. In the letter, WCS indicates that it will file a request for extension by August 10, 2006. In that regard, the letter states as follows:

> Your letter of June 30th requested that we submit the request for a schedule extension by July 10, 2006. However, if acceptable to you, we propose to submit the extension request by August 10, 2006. This additional time will allow for some additional meetings with TCEQ staff to assure that we have a complete understanding of the outstanding issues and are therefore able to provide thorough, considered, responsive resolutions. As you know, this is a very important project for the people of Texas and for the nation. We are determined that TCEQ staff be confident in the results of their review.

TCEQ has indicated that the proposed timeline for filing a request for extension is acceptable.

Next Step

It is unclear at this time how the noted outstanding issues and technical deficiencies will impact the timeline for reviewing the license application. Under TCEQ rules, absent the suggested request for an extension of time, TCEQ technical review of the application was scheduled to be completed by August 31, 2006 – after which time a draft license and hearing notice could be scheduled for publication, if recommended for licensure. Thereafter, it was anticipated that administrative hearings could be held in late 2006, with a proposal for licensing decision expected in late 2007. By statute, TCEQ Commissioners would then issue a license or denial 90 days later—in early 2008.

Background

Waste Control Specialists submitted a license application to TCEQ on August 4, 2004. Thereafter, there were three rounds of administrative notice of deficiencies that spanned 225 days, as built into the statutory timeline for license review. On February 18, 2005, TCEQ issued a Notice of Administrative Completeness.

On March 31, 2005, a public meeting was held in Andrews County, Texas to accept formal public comment on the administratively complete application. In addition, written comments were accepted by the TCEQ up to the public meeting to be included in the written evaluation, and at any time during the application review process.

On May 1, 2005, the TCEQ Executive Director evaluated the staff's written evaluation based on statutory tiered criteria and the administratively complete application materials. The criteria are as follows:

Tier 1 Criteria: site characteristics and financial assurance requirements
Tier 2 Criteria: engineering and design
Tier 3 Criteria: technical qualifications and facility operations
Tier 4 Criteria: land use compatibility and socioeconomic effect

On September 16, 2005, TCEQ sent a certified letter to WCS itemizing the first round of various technical deficiencies contained in the company's license application. WCS responded by letter dated November 30, 2005.

On January 30, 2006, TCEQ issued a second and final Technical Notice of Deficiency. WCS responded with submissions on March 31 and April 28 of this year.

According to TCEQ, the revisions make "considerable" technical changes to the application late in the process—including the submission of a new conceptual model for the site's geology and hydrogeology and new designs for the disposal facilities that will require extensive technical review. TCEQ has indicated that "serious concerns about the application remain" and that "many deficiencies noted in the previous notices have not been adequately addressed." Accordingly, the second notice of technical deficiency cannot be closed based on the information submitted. Under TCEQ rules, an application may be returned if the applicant does not timely submit the necessary

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WCS Requests Extension

On August 8, Rodney Baltzer, President of Waste Control Specialists, LLC (WCS), sent a letter to Glenn Shankle, Executive Director of the Texas Commission on Environmental Quality (TCEQ), requesting additional time to respond to the agency's Second Technical Notice of Deficiency pursuant to 30 TAC 281.19(c). WCS is requesting the extension to address outstanding issues that "may require field work and the collection of additional data, thus requiring additional time for WCS to fully respond." The TCEQ will also need additional time to review information that is anticipated to be submitted by WCS to address unresolved issues.

In explaining the request for extension, Baltzer writes as follows:

> The issues surrounding the proposed license are complex, and WCS has provided a significant amount of information in its application to address those issues. Additionally, the TCEQ staff has put forth a substantial effort in reviewing the application. Unfortunately, it appears that despite the tremendous efforts by all involved, the schedule for completing the technical review of the application will not be met. Therefore, as provided by TAC 281.19(c), WCS respectfully requests an extension to May 31, 2007 in order to fully respond to the outstanding technical issues from the Second Technical Notice of Deficiency.

For additional information, refer to the TCEQ's website at *http://www.tceq.state.tx.us/permitting/waste_permits/rad_waste/wcs_license_app.html*.

Healthy Environment Alliance of Utah v. Utah Radiation Control Board

Challenge to Energy*Solutions* Expansion Goes to Utah Supreme Court

On July 12, 2006, the Utah Court of Appeals announced that it would hand up to the Utah Supreme Court review of a case filed by Healthy Environment Alliance of Utah ("HEAL Utah") that seeks review of a January 26 order by the Utah Radiation Control Board. In the contested order, the board grants final approval to an amendment request filed by Energy*Solutions'* Clive facility to expand its low-level radioactive waste disposal operations onto 536-acres of adjacent land that were purchased last year from Cedar Mountain Environmental. In so doing, the board rejected HEAL Utah's original challenge of the expansion plans.

Transfer to State Supreme Court

It is not immediately clear as to whether the Utah Supreme Court requested transfer of the case or if the appellate court determined on its own to send the action to the high court. A case may be transferred if another court has cases involving similar cases before it. Or, a case may be transferred if it appears likely that it will end up before the higher court no matter what the appellate judges do. In either case, transfer to the Utah Supreme Court will shorten the appeals process.

The Appeal

HEAL Utah filed its appeal of the Radiation Control Board's January 26 order on February 27. (See *LLW Notes*, March/April 2006, pp. 14 – 15.) In its petition, HEAL Utah states simply that it "seeks review of the entire Order [of the Radiation Control Board], including the legal bases and associated matters pertaining thereto." Specifically, the petitioner "requests the court to direct the respondent to prepare and certify to this court its entire record, which shall include all of the proceedings and evidence taken in this matter."

In pursuing the appeal, HEAL Utah claims that the approval process was a "sham" and that the board failed to meet the legal or technical requirements for granting an extension. "The regulatory board misapplied the law and disregarded the facts of this case," said Jim McConkie—one of the attorneys representing HEAL Utah in its appeal. "The gravity of locking Utah into another half-century of nuclear waste disposal deserves a lot more scrutiny than what was given to this expansion request."

The Board's Decision

The Radiation Control Board's decision to approve the expansion plans follows a January 6 hearing on the amendment request and HEAL Utah's original challenge. During the course of the hearing, board members considered four motions relating to the challenge, including a motion to disqualify and a motion for judgment on the pleadings. Board members appeared poised to approve the expansion request but did not do so due to confusion over the state's authority to regulate waste on the additional 536 acres of land. The Clive Facility contends that the board is only expanding the site's boundary, not the company's ability to take, bury or treat waste in the new area. But Dianne Nielson, Director of the Utah Department of Environmental Quality, expressed concern whether "[t]hat has the potential of being a regulatory quagmire" and whether such an interpretation would have the impact of barring the Clive Facility from handling waste inside the new boundary, including hauling it across the newly added acreage as has been past practice. Accordingly, the board referred the matter to agency lawyers and technical staff for clarification.

Approval of the Amendment Request The January 26 Proposed Order and Findings of Fact and Conclusions, as approved, state as follows:

> This License Amendment does not confer a right or authorize nor does it create an expectation of a right or authorization to [the Clive Facility] to store, treat, dispose of or otherwise manage waste on ... [the

> new acreage], or to construct significant new facilities related to the storage, treatment, management or disposal of waste on ... [the new acreage] unless [the Clive Facility] submits and obtains approval for such license amendment application(s).

The language underscores the board's intent that the approval is for a boundary change only, not for waste disposal on the new acreage that could require additional safety and engineering reviews that have not been conducted.

Rejection of HEAL Utah's Challenge The board's decision specifically rejects HEAL Utah's challenge and grants the Clive Facility's Motion for Judgment on the Pleadings. In so doing, the board held that "[t]he process is allowed by the applicable regulations and is consistent with the past practices of the Division of Radiation Control."

Background

The Clive Facility was established in 1988. Every five years, the company is required to renew its license. The pending change would be the 23rd since the last renewal.

Basis for the Challenge HEAL Utah's original challenge contested 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 Energy*Solutions* purchased last year from Cedar Mountain Environmental. In particular, the administrative challenge called 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." HEAL Utah contends that the new acreage has not been fully and appropriately analyzed for its suitability to hold waste.

Preliminary and Required Approvals The Clive Facility unsuccessfully lobbied to have the expansion considered during a special session of the legislature in April 2005, 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.

Governor's Expressed Opposition In mid-November, Utah Governor Jon Huntsman, Jr. told local press that he will not approve the Clive Facility's amendment request to expand the site. (See *LLW Notes,* November/December 2005, pp. 1, 7-8.) The announcement, which came as a surprise to most, followed the transmittal of opposition letters from Citizen's Against Radioactive Waste to the governor and Utah's 104 legislators that calls on them to reject the expansion plans. 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." Indeed, the Governor opposed the Clive Facility's earlier efforts to accept Class B and C low-level radioactive waste, lobbied the federal government to move the Atlas Corporation uranium mill tailings from the Colorado River's edge, and continues to fight plans by Private Fuel Storage, LLC to store spent fuel on the Skull Valley Band of Goshute Indians Reservation.

Clive Facility's Suspension of Expansion Plans Shortly after the board's decision, the Clive Facility announced that it is suspending the expansion plans. "In this instance," said the company in a statement, "we feel it is in everyone's best interest to announce that we will not pursue legislative approval for ... [the new section] at this time." Under current state law, legislative and gubernatorial approvals are required before the amendment can go into effect.

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, the Clive Facility, at (801) 532-1330.

Board of County Commissioners of the County of Adams v. Colorado Department of Public Health and Environment

Court Vacates Stay of Deer Trail's Radioactive Materials License

On July 5, 2006, the District Court of Adams County vacated the judicial stay of a radioactive materials license previously granted to the Clean Harbors' Deer Trail Facility (CHDTF) via bench verdict. In so doing, the court ruled that plaintiff Adams County Board of Commissioners ("Adams County") does not have judicial standing to sue the State of Colorado.

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. Subsequently, in early May 2005, the State of Colorado submitted an application to the Rocky Mountain Board for the designation of the 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. At a meeting in June 2005, the Rocky Mountain Board designated the facility as a limited regional disposal facility for radium processing waste subject to specified terms and conditions, including the subsequent issuance of a radioactive materials license by CDPHE. (See *LLW Notes*, May/June 2005, pp. 1, 7.)

In October 2005, Adams County submitted comments and supporting materials in opposition to renewal of the CHDTF's hazardous waste treatment, storage and disposal permit and to issuance of a final radiation materials license for the facility. (See *LLW Notes*, November/December 2005, pp. 10, 11.) In December 2005, CDPHE issued the requested permit renewal and materials license. The radioactive materials license allows the facility to accept limited types of naturally occurring radioactive waste (NORM) or such waste that has been modified in industrial processes. It prohibits the acceptance of artificial or artificially altered radioactive material from research, medicine, weapons, nuclear power plants or other operations.

For information on the details of the permit or license, contact Joe Schieffelin, Steve Tarlton or Jeannine Natterman of the CDPHE at (888) 569-1831 or Phil Retallick of Clean Harbors at (803) 691-3427.

The Issues

Adams County contends CDPHE's issuance of a radioactive materials license to the Deer Trail facility "was in excess of its statutory jurisdiction, authority, purposes and limitations, was arbitrary and capricious, was an abuse of discretion, was unsupported by substantial evidence, was a denial of a statutory right, was contrary to the Radiation Control Act and its regulations, and otherwise contrary to law." In support of this contention, Adams County alleges, among other things, that

- Clean Harbors failed to obtain a certificate of designation from Adams County for the operation of a radioactive waste disposal facility prior to issuing the license;
- CDPHE improperly exempted and waived numerous requirements of the Radiation Control Act, the Low-Level Radioactive Waste Act and regulations promulgated thereunder including requirements for financial assurance warranties, decommissioning warranties, long-term care warranties, and technical information and analyses;
- CDPHE violated the provisions of the Radiation Control Act by authorizing the commingling of hazardous waste and radioactive waste in one facility;

- CDPHE improperly exempted Clean Harbors from the requirement that all radioactive waste disposal facilities be owned by the state;
- CDPHE failed to comply with the public comment, public hearing, legislative and gubernatorial requirements of the Radiation Control Act and improperly denied Adam County's requests for an extension to provide comments and for meaningful public hearings; and,
- CDPHE improperly circumvented and preempted Adams County's control of land use decision-making.

For a more detailed listing of the specific issues raised by Adams County in their January 20 complaint, see LLW Notes, January/February 2006, pp. 19 - 20.

The Litigation

On January 20, Adams County filed two lawsuits against CDPHE. One suit—which was filed in the District Court of Adams County—challenges the CHDTF's hazardous waste permit renewal. The other suit—which was filed in the District Court for the City and County of Denver—challenges the issuance of the radioactive materials license to CHDTF. (See *LLW Notes*, January/February 2006, pp. 19 - 20.)

At a May 2006 hearing on CDPHE's motion to dismiss, the district court considered and granted a motion to intervene from Clean Harbors, as well as the company's associated motion to dismiss the lawsuit. Clean Harbors' motion to dismiss incorporated arguments raised by the state in its motion.

In dismissing the action, the court wrote as follows:

> The Court finds that the CDPHE is vested with ultimate authority in the area of radioactive materials regulation under Colo. Rev. Stat. S. 25-11-103(1) and (2). CDPHE is thus a superior agency to Plaintiff Adams County in this regard. Therefore the Court determines that the case of Romer v. Board of County Commissioners of Pueblo County, 956 P.2d 566 (Colo. 1998) is controlling and Adams County lacks standing under the prudential considerations expressed therein to pursue the judicial relief that it is seeking in this case.

In dismissing the suit, the court held that the plaintiff lacks constitutional and prudential standing and that the court thus lacks subject matter jurisdiction over the action.

Related Matters

On August 9, the Rocky Mountain Low-Level Radioactive Waste Board will hold a regular meeting at the Denver Airport Marriott at Gateway Park. The meeting, which will begin at 1:00 p.m., is a continuation of the May 9 and May 30 regular meetings.

During the course of the meeting, the Rocky Mountain Board will consider an application from the State of Colorado to amend the regional facility designation of CHDTF. The application requests that the Board's designation be amended to authorize the facility to accept the same wastes as authorized in the radioactive materials license issued by CDPHE.

According to a meeting notice, "[t]he wastes for which designation is requested consist of naturally-occurring radioactive material (NORM) and technologically-enhanced naturally-occurring radioactive material (TENORM) with a total activity not exceeding 2,000 picocuries per gram (pCi/g) and Radium-226 activity not exceeding 400 pCi/g."

The Board had previously granted the State of Colorado's request to delay consideration of the amended application for a period of 60 days.

For information on the Deer Trail facility, please contact Phil Retallick of Clean Harbors at (803) 691-3427. For information on Adams County's complaints, please contact Howard Kennison of Lindquist and Vennum at (303) 573-5900.

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

State Appeals Striking Down of Hanford Initiative

On July 12, the Washington Department of Ecology filed an appeal with the U.S. Court of Appeals for the Ninth Circuit in San Francisco challenging a lower court's decision one month earlier to strike down the Washington State Cleanup Priority Act ("CPA")—a voter initiative that would bar the U.S. Department of Energy from sending any additional waste to the Hanford nuclear reservation until the department cleans up the facility.

"We respectfully disagree with the federal district court's conclusion that Initiative 297 is unconstitutional and we are not content to let this decision rest with a single district court judge," wrote Attorney General Rob McKenna in a press release.

McKenna's office had argued that the initiative is valid because the state has authority to regulate hazardous wastes, including radioactive materials. The state also argued that the federal government could not strike down a law without first seeing how it would be applied.

The District Court's Ruling

The U.S. District Court for the Eastern District of Washington struck down the CPA as unconstitutional on June 12 because it violates the federal government's authority over nuclear waste and interstate commerce. The court held, among other things, that the initiative is preempted by the Atomic Energy Act (AEA) and violates sovereign immunity and the Supremacy Clause of the U.S. Constitution. In addition, the court found that specific sections of the CPA violate the dormant Commerce Clause, the deliberative process privilege, and the Resource and Conservation Recovery Act (RCRA) waiver of immunity to the United States. Moreover, the court ruled that the initiative is facially invalid and cannot be applied constitutionally in any circumstances—i.e., severability is not an issue.

The court also held that the CPA substantially impairs the Tri-Party Agreement (TPA), contracts between the Batelle Memorial Institute and U.S. Department of Energy (DOE), and Framatome's private contracts, in violation of the Contract Clause. The TPA was entered into in by the State of Washington, DOE and the U.S. Environmental Protection Agency (EPA) in 1989 to, among other things, assure compliance with the permitting and corrective action requirements of RCRA and DOE's obligations under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

"If other states start passing legislation similar to [the CPA], the simple fact is that DOE will not be moving waste anywhere among its nationwide sites as it proposes to do as part of its nationwide cleanup program," wrote the court in a 62-page ruling. "Decisions which need to be made at a national level addressing national concerns cannot be trumped by protectionist regulations enacted by individual member states."

The district court's ruling did not have any immediate impact in the sense that the CPA was not being enforced while the case was pending. In addition, the DOE had previously agreed to suspend waste shipments to Hanford in a separate legal proceeding until it reconsiders the environmental impact of its waste disposal plans for the Washington nuclear reservation. DOE does not expect that work to be completed for at least two years.

For additional information, see LLW Notes, May/June 2006, pp. 1, 11 – 12.

Background

The Initiative By a margin of roughly 2 to 1, voters in the State of Washington on November 2, 2004 overwhelmingly approved an initiative to

require the U.S. Department of Energy to clean up the Hanford nuclear reservation before it sends any additional waste to the facility. In addition, initiative 297 also seeks to prevent the disposal of waste in unlined trenches. (See *LLW Notes*, January/February 2004, p. 7.) The initiative—which is known as the "Cleanup Priority Act"—was sponsored by Heart of America Northwest and received endorsements from environmental groups, the state Democratic Party and the League of Women Voters.

The Lawsuit After passage of the initiative, DOE filed a lawsuit challenging its constitutionality and sought a restraining order on its enforcement. In so doing, the department argued that there are too many uncertainties about how the state will implement the measure. In addition, Department of Justice attorneys contended that some cleanup efforts at the site have already been halted as a result of the initiative. On December 2, 2004, the judge for the U.S. District Court of the Eastern District of Washington ruled for the federal government and issued the requested restraining order—although waste shipments to the site had already been halted under another lawsuit. In so ruling, the judge found that there is a possibility that the initiative may be invalid and that DOE will suffer irreparable injury with regard to onsite cleanup at Hanford if it were to immediately become law. (See *LLW Notes*, November/December 2004, pp. 13 - 14.)

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

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

On July 28, 2005, the Washington State Supreme Court answered certified questions of state law for the district court pertaining to the CPA. (See *LLW Notes*, July/August 2005, pp. 14 - 17.) In particular, the state court provided certified answers to five questions on how the act should be interpreted. It is important to note that while the state court answered questions regarding interpretation of the initiative, however, the court did not rule on the constitutionality of the initiative or parts thereof. Instead, the case was returned to the federal district court, which then applied the state court's certified answers in adjudicating the case.

Activities Currently, about 120,000 cubic meters of radioactive waste are retrievably-stored at Hanford. The State of Washington and the federal government recently agreed on a long-term schedule for cleaning up the waste. In addition, the federal government has shipped small quantities of radioactive waste from two other federal sites to Hanford for packaging before sending it on to the Waste Isolation Pilot Plant (WIPP) in New Mexico.

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additional information in response to a notice of deficiency.

On June 5, 2006, TCEQ sent a letter to WCS President Rodney Baltzer providing a status update on the agency's review of WCS' license application. In the letter, Dan Eden, Deputy Director of TCEQ's Office of Permitting, Remediation, and Registration, advised Baltzer that the application contains "significant" unresolved deficiencies that put in jeopardy the schedule for completing the technical review in 15 months and "are problematic and affect our ability to offer a recommendation to issue a license for the proposed facilities." Accordingly, the letter stated that WCS will need to request an extension of time consistent with TCEQ rules and that Baltzer should contact Eden within 24 hours "to discuss a proposed timeline for moving forward."(See *LLW Notes*, May/June 2006, pp. 8 - 10.)

For additional information, contact Susan Jablonski of the Texas Commission on Environmental Quality at (512) 239-6731 or Rodney Baltzer of Waste Control Specialists at (972) 448-1415.

U.S. Government Accountability Office

GAO to Study Interstate Compacts

The U.S. Government Accountability Office (GAO)—an independent agency of Congress—recently announced that the Committee on Resources of the U.S. House of Representatives has asked it "to provide information on interstate compacts involving environment and natural resource planning and management." The Committee, according to GAO, is particularly interested in how interstate compacts approved by Congress are structured and governed, as well as any specific challenges that they may face.

As part of its review, GAO plans to survey compact commission officials to obtain information regarding the compact's organizational structure, authority and powers, and mechanisms for providing public accountability and resolving disputes. GAO plans to conduct the surveys via the Internet, beginning sometime during the week of August 21. Responses to the surveys—which will take about 30 minutes to complete—will be used to provide Congress with key information on compacts and to develop aggregate statistics, observations, and findings. GAO plans to report summary responses, and may use some responses as case examples, but will not report any information that identifies any individuals.

GAO plans to notify invited compact commission officials on the day that the survey is activated of its availability and how to access it. Respondents should be able to complete the survey questionnaire from any computer with Internet access, although it may also be printed out and returned via facsimile or postal service.

For additional information, please contact Chris Ferencik of the U.S. Government Accountability Office at (404) 679-1887 or ferencikc@gao.gov or Susan Malone, also of GAO, at (415) 904-2261 or malones@gao.gov.

U.S. Senate

FY '07 Appropriations Bill Contains Spent Fuel Provision

The Senate Energy and Water fiscal year 2007 appropriations bill contains a provision that, if passed, could require Governors to designate an in-state site for the storage of commercial spent fuel or, in the alternative, face the prospect that the U.S. Department of Energy could designate a site within the state for regional storage. The language, which is contained in H.R. 5427 Section 313 and S. Rpt. 109-274, was included by Energy and Water Appropriations Subcommittee Chair Pete Domenici (NM) and is supported by Senator Harry Reid (NV).

The draft bill provides the Secretary of Energy with expanded authority to consolidate commercial spent nuclear fuel at a separate facility within a state or at a regional site. Section 313 of the bill requires the Secretary to appoint a Director of Consolidation and Preparation (CAP). Then, within 180 days of the bill's enactment, the CAP Director is directed to issue a report to the Secretary making recommendations regarding the siting of a facility for the consolidation and preparation of spent nuclear fuel in each state that contains a commercial nuclear power reactor. Within 90 days of issuance of the report, the Secretary—in consultation with the Governor of each state hosting a commercial nuclear power reactor—shall designate a site for a CAP facility within that state. The Secretary is directed to first consider sites recommended by the Governors.

The draft bill also provides that the Secretary may find it to be in the national interest to designate a regional CAP facility. However, the bill directs that a regional CAP facility may not be located in a state with a designated and licensed state CAP site. Indeed, the Senate Committee Report on the draft legislation states that "[t]he Committee

believes it is desirable that States address their own waste needs and the Committee directs the Secretary to provide sufficient time for a State site to be designated and licensed before making a decision to designate a regional facility."

The Senate Committee Report further states that any site owned by the federal government or any site that can be purchased from a willing seller may be designated as a CAP facility site. "Nevada, as the State that has been designated as the site of the permanent repository is ineligible, along with any State in which a commercial, away-from-reactor, dry cask storage facility is authorized." The report also makes ineligible lands within national parks, wildlife refuges, or wilderness areas.

The draft bill provides that the Secretary shall submit a license application to the U.S. Nuclear Regulatory Commission no later than 30 days after designation of a CAP facility site. The license for a CAP facility shall be for a term of 25 years and shall be non-renewable. The Secretary must submit an environmental report along with the license application. In accordance with the National Environmental Policy Act of 1969, NRC is required to issue an environmental impact statement (EIS) prior to issuing a license. Judicial review of the EIS shall be consolidated with review of the NRC's licensing decision—which decision must be issued within 32 months.

Finally, the draft legislation states that, upon the request of the owner of a shut-down reactor, the Secretary is required to assume title to, and responsibility for, spent nuclear fuel at the site of the shut-down reactor. It also states that "[t]he provisions of this section, along with the Secretary's obligation to develop a permanent repository under the Nuclear Waste Policy Act of 1982, provide sufficient and independent grounds for further findings by the NRC that spent nuclear fuel will be disposed of safely for purposes of licensing civilian nuclear power reactors." And, it provides that the Secretary shall make expenditures from the Nuclear Waste Fund for the siting, construction and operation of CAP facilities.

As of press time, the Senate Energy and Water fiscal year 2007 appropriations bill remains pending before the Senate.

Advisory Committee on Nuclear Waste

ACNW Re-Elects Chair and Vice-Chair

In mid-2006, the U.S. Nuclear Regulatory Commission's Advisory Committee on Nuclear Waste re-elected Dr. Michael Ryan as Chair and Allen Croff as Vice-Chair. ACNW provides independent technical advice to the Commission on all aspects of nuclear waste management.

Dr. Ryan, who has been an ACNW member since June 2002, has more than 25 years of experience in radioactive waste management and radiation protection. He is an independent consultant in radiological sciences and health physics and an adjunct faculty member in the College of Health Professions at Texas A&M University. He has served on the Board of Directors of the National Council on Radiation Protection and Measurements and as the Scientific Vice President for the Council's Radioactive and Mixed Water Management Program. He has authored numerous articles and publications in such areas as radiation dosimetry, radioactive waste management, regulatory compliance for radioactive materials and environmental radiation assessment. He holds a Bachelor of Science degree in radiological health physics from Lowell Technological Institute and a Master of Science degree in radiological sciences and protection from the University of Lowell. He earned his Ph.D. in health physics from the Georgia Institute of Technology.

Croff , who has been an ACNW member since July 2004, worked at the Oak Ridge National Laboratory for 29 years, retiring in 2003. He held positions in staff, line management, and program management concerning waste management research and development, and strategic planning. One of his significant achievements was creating the ORIGEN2 computer code used worldwide to calculate radionuclide buildup and decay, and its application to nuclear material and waste characterization, risk analysis and nuclear fuel cycle analysis. Craff previously served as chair for a committee of the National Council on Radiation Protection and Measurements on risk-based waste classification and has served on numerous committees of the National Academy of Sciences. He received a Bachelor of Science degree in chemical engineering from Michigan State University, an MBA from the University of Tennessee and Master of Science degree in nuclear engineering from MIT.

U.S. Nuclear Regulatory Commission

Dale Klein Sworn in as NRC Chair

On July 1, 2006, Dr. Dale Klein was sworn in as Chair of the U.S. Nuclear Regulatory Commission at a private ceremony at NRC headquarters in Rockville, Maryland. Klein, who was designated by President Bush, will serve a five-year term on the NRC.

"As the NRC faces the challenges of the coming years, I intend to do all I can do to ensure the safety and security of the American public as the NRC does the critical job of overseeing the operations of nuclear reactors, the use of nuclear materials, and effectively reviewing expected applications for new reactors in a timely manner," said Klein. "I consider regulatory stability a crucial element in ensuring that our work is done in a timely manner," added Klein.

Klein, who holds a doctorate in nuclear engineering, previously served as Assistant to the Secretary of Defense for Nuclear and Chemical and Biological Defense Programs. Prior to his appointment to the NRC, Klein was the Vice-Chancellor for Special Engineering Programs at the University of Texas System while also serving as a professor in the Department of Mechanical Engineering (Nuclear Program) at the University of Texas at Austin.

Klein, 58, served as Chair and Executive Director of the Amarillo National Research Center (ANRC), during which time he oversaw over $45 million of funding concerning plutonium research and nuclear weapon dismantlement issues.

In addition, Klein held other positions during his tenure at the University of Texas at Austin where he holds a Bob R. Dorsey Endowed Professorship: Director of the Nuclear Engineering Teaching Laboratory; Deputy Director of the Center for Energy Studies; and Associate Dean for Research and Administration in the College of Engineering. In addition to his duties at the University of Texas at Austin and the University of Texas System, Klein was an active member of several Department of Energy national committees, including the Nuclear Energy Research Advisory Committee.

Klein received his Ph.D. in nuclear engineering from the University of Missouri-Columbia. He has been honored with many awards and distinctions and received over $50 million in research funding, equipment and educational support. He has published over 100 technical papers and reports and co-edited one book. He has made over 300 presentations on energy and has written numerous technical editorials on energy issues that have been published in major newspapers throughout the United States.

(Continued from page 1)

groups want action to be taken on issues of concern to them, they do not necessarily hold the same views regarding what actions are needed or what issues require the most attention. Meanwhile, a number of new technical issues, involving security matters as well as protection of public health and the environment, have emerged.

Issues to Address

As part of its strategic assessment, NRC staff is soliciting public comment on "what changes, if any, should be made to the current LLW program regulatory framework as well as specific actions that the staff might undertake to facilitate such changes." In responding to this question, staff is asking that persons consider and address the following nine questions:

Regarding the Current LLW Disposal Regulatory System

1. What are your key safety and cost drivers and/or concerns relative to LLW disposal?
2. What vulnerabilities or impediments, if any, are there in the current regulatory approach toward LLW disposal in the U.S., in terms of their effect on:
    a. Regulatory system reliability, predictability, and adaptability;
    b. Regulatory burden (including cost); and
    c. Safety, security and protection of the environment?

Potential Alternative Futures

3. Assuming the existing legislative and regulatory framework remains unchanged, what would you expect the future to look like with regard to the types and volumes of LLW streams and the availability of disposal options for Class A, B, C, and greater-than-class-C (GTCC) LLW five years from now? Twenty years from now? What would more optimistic and pessimistic disposal scenarios look like compared to your "expected future"?
4. How might potential future disposal scenarios affect LLW storage and disposal in the U.S. in terms of:
    d. Regulatory system reliability, predictability, and adaptability;

e. Regulatory burden (including cost); and
f. Safety, security and protection of the environment?

Can the Future Be Altered?

5. What actions could be taken by NRC and other federal and state authorities, as well as by private industry and national scientific and technical organizations, to optimize management of LLW and improve the future outlook? Which of the following investments are most likely to yield benefits:
    g. Changes in regulations;
    h. Changes in regulatory guidance;
    i. Changes in industry practices;
    j. Other (name).
6. Are there actions (regulatory and/or industry initiated) that can/should be taken in regard to specific issues such as:
    k. Storage, disposal, tracking and security of GTCC waste (particularly sealed sources);
    l. Availability and cost of disposal of Class B and C LLW;
    m. Disposal options for depleted uranium;
    n. Extended storage of LLW;
    o. Disposal options for low-activity waste (LAW)/very low level waste (VLLW);
    p. On-site disposal of LLW;
    q. Other (name).
7. What unintended consequences might result from the postulated changes identified in response to questions 5 and 6?

Interagency Communication and Cooperation

8. Based on your observations of what works well and not-so-well, domestically and/or internationally, with regard to the management of radioactive and/or hazardous waste, what actions can the NRC and other Federal regulatory agencies take to improve their communication with affected and interested stakeholders?
9. What specific actions can NRC take to improve coordination with other Federal agencies so as to obtain a more consistent treatment of radioactive wastes that possess similar or equivalent levels of biological hazard.

Additional Information to be Considered by NRC

According to the July 7 *Federal Register* notice, NRC intends to use information gathered at the May 23-24 workshop sponsored by the Advisory Committee on Nuclear Waste to develop its strategic assessment. The purpose of that workshop was to (a) provide input to the ACNW regarding areas where NRC regulations for near-surface disposal of low-level radioactive waste in 10 CFR Part 61 might be more risk-informed and (b) to provide information for NRC staff to consider in its strategic assessment.

A transcript of the ACNW meeting is publicly available at http://www.nrc.gov/reading-rm/doc-collections/acnw/tr2006/.

Submittal of Comments

The public comment period will now end on September 5, 2006. Comments should be submitted to the Chief, Rules and Directives Branch, Mail Stop T6-D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Comments will also be accepted via e-mail at NRCREP@nrc.gov or via facsimile to

(301) 415-5397, Attention: Ryan Whited.
For additional information, contact Ryan Whited, Chief, Low Level Waste Section, Environmental and Performance Assessment Directorate, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Rockville, MD 20852 (phone 301-415-7257; e-mail arw2@nrc.gov).

NRC Seeks Comment re Byproduct Material

The U.S. Nuclear Regulatory Commission is seeking public comments on a proposed rule to incorporate newly added radioactive "byproduct" material into its regulatory framework. The expanded authority is mandated by the Energy Policy Act of 2005, which expanded the definition of byproduct material thereby placing additional radioactive material under the agency's jurisdiction. Under the terms of the act, final regulations must be issued by February 7, 2007.

An NRC press release describes the proposed rule as follows:

> The proposed rule would establish the regulatory framework for regulating certain discrete sources of radium-226, accelerator-produced radioactive material (ARM), and certain discrete sources of naturally occurring radioactive material (NORM). The proposed rule would revise the definition for 'byproduct material,' add a definition for 'discrete source,' amend existing regulations to include radium-226 and certain accelerator-produced radioisotopes, and add provisions to the regulatory framework for overseeing the newly added byproduct material.

NRC has not regulated ARM or NORM in the past, but most states have regulatory programs for such material. Other federal agencies, states, and affected personnel from the commercial, industrial, and medical communities have been involved in the rulemaking process that included interactive discussion at a November 2005 roundtable public meeting. Comments from the states and Advisory Committee on Medical Uses of Isotopes—which were provided a preliminary draft of the proposed rule to enhance cooperation and improve efficiency in rulemaking—were considered in finalizing the proposed rule.

In particular, NRC is seeking public comments on the issuance of general licenses and exemption provisions for certain items containing radium-226, provisions for exemptions and "grandfathering" certain products involving ARM or NORM, and the compatibility designation of the proposed regulations for state programs.

The proposed rule contains an implementation strategy including:

- the use of a transition plan to lay out NRC's plan for waiver termination and for regulatory transition;
- the plan to have Agreement States continue to carry out their regulatory programs until each state certifies, with NRC concurrence, that its regulatory program adequately covers ARM and NORM; and
- the inclusion of specific regulatory provisions instead of using enforcement discretion that would allow individuals to continue using ARM and NORM provided that they comply with other applicable requirements while waiting for a licensing decision by NRC.

A public meeting on the proposed rule is scheduled for August 22 at the NRC's William Olmstead High-Level Waste Hearing Facility in Pacific Enterprise Plaza, Building 1, in Las Vegas, Nevada.

A meeting notice will be published in the *Federal Register* shortly. NRC will accept comments on the proposed rule up to 45 days after publication in the *Federal Register*, also expected shortly. Comments should be submitted either (1) via regular mail service to Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C., 20555-0001, Attention: Rulemaking and Adjudications Staff; (2) via facsimile transmission to (301) 415-1101; (3) via e-mail to SECY@nrc.gov; or (4) via the NRC's eRulemaking Portal at http://www.regulations.gov. The entire proposed rule will also be available at that location.

NRC Publishes Groundwater Contamination Notice

In early July, the U.S. Nuclear Regulatory Commission announced that it is informing all operators of nuclear power plants and research and test reactors, including those currently undergoing decommissioning, about recent examples of groundwater contamination at reactor sites due to undetected leaks from facility structures, systems or components. Plant operators have recently informed NRC of several leaks from spent fuel pools and underground pipes. Although none of these events has impacted public health, NRC is sharing its plans for addressing the issue as well as lessons learned to this point in time.

The information notice published by NRC reminds plant operators that while the agency's regulations require environmental monitoring related to planned releases of slightly radioactive water from facilities, operators should not assume information from that monitoring will provide full understanding of potential undetected contamination.

Lessons learned, as identified in the notice, include the following:

- variable operations from spent fuel pools, as well as water transfer activities during refueling operations, can complicate efforts to detect small leaks;
- plant operators should consider monitoring groundwater that leaks into rooms below ground level, in order to exclude contaminated leakage from the plant as the leak source;
- groundwater monitoring and sample analysis should be able to detect isotopes common to nuclear power plant operation; and,
- onsite monitoring and sampling programs could be the only reliable method for detecting repeated leakage, particularly underground leakage.

The groundwater contamination notice can be found on NRC's website by entering accession number ML060540038 at http://adamswebsearch.nrc.gov/dologin.htm.

In addition, NRC recently announced the creation of a task force to examine the issue of inadvertent, unmonitored releases of radioactive liquids containing tritium from U.S. commercial nuclear power plants. General information regarding groundwater contamination is available on the NRC's website at http://www.nrc.gov/reactors/operating/ops-experience/grndwtr-contam-tritium.html.

For additional information, contact Timothy Frye of the NRC at (301) 415-9676 or tjf@nrc.gov.

Commissioner Lyons Takes Oath at NRC

On June 28, Pete Lyons was sworn in as a Commissioner of the U.S. Nuclear Regulatory Commission by then-Chair Nils Diaz at NRC headquarters in Rockville, Maryland. Lyons, who had been appointed by President Bush during a congressional recess and assumed office on January 25, 2005, was recently confirmed by the Senate to fill out the remainder of a full term to end on June 30, 2009. To date, Lyons service at the NRC has focused on the goals of nuclear safety and security. In addition, he has been actively engaged in human capital challenges at NRC, a robust research program and preparations for the agency to meet the coming wave of applications expected for advanced reactor designs and licenses.

Prior to joining the NRC, Lyons served for eight years as science advisor to Senator Pete Domenici (R-NM) and to the Senate Energy and Natural Resources Committee. During this time, he focused on military and civilian uses of nuclear technologies, national science policy and nuclear non-proliferation. He also advised Senator Domenici on issues pertaining to international nuclear policy, energy research and development, and hydrogen technology.

Before working for the Senate, Lyons worked for nearly 30 years at the Los Alamos National Laboratory in New Mexico. Lyons held various positions, including director for industrial partnerships, deputy associate director for energy and environment, and deputy associate director for defense research and applications. While at Los Alamos, he spent over a decade supporting nuclear test diagnostics, and as a result of this experience, has brought to the NRC insights regarding adequacy of computer modeling.

Lyons has published well over 100 technical papers, holds three patents related to fiber optics and plasma diagnostics, and served as chair of the NATO Nuclear Effects Task Group for five years. He received his doctorate in nuclear astrophysics from the California Institute of Technology in 1969 and earned a bachelor's degree in physics/math from the University of Arizona in 1964.

License Renewals Continue to Move Forward

On August 4, the U.S. Nuclear Regulatory Commission announced that an application for a 20-year renewal of the operating license for the James A. Fitzpatrick nuclear power plant is now available for public review. Also in early August, the Atomic Safety and Licensing Board (ASLB) panel heard oral argument on requests for a hearing on the Vermont Yankee license renewal application. And, just a few weeks earlier, on July 19, NRC staff met with Entergy representatives to discuss the findings of a team audit associated with the license renewal application for the Pilgrim nuclear power plant.

On June 26, NRC renewed the operating licenses of the Brunswick Steam Electric Plant, Units 1 and 2, for an additional 20 years. And, on June 12, NRC announced that it is seeking public comment on its preliminary conclusion that there are no environmental impacts that would preclude renewal of the operating license for the Oyster Creek Nuclear Generating Station in Lacey Township, New Jersey.

Fitzpatrick Nuclear Power Plant

The Fitzpatrick plant is located approximately eight miles northeast of Oswego, New York. Its current

operating license expires on October 17, 2014. The applicant, Entergy Nuclear Operations, Inc., submitted a renewal application on August 1. NRC staff is currently conducting its initial reviews of the application to determine whether it contains enough information for the required formal reviews. If the application has sufficient information, the NRC will formally docket it and will announce an opportunity for the public to request an adjudicatory hearing on the renewal request.

A copy of the Fitzpatrick plant license renewal request is available on the NRC web site at http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html.

Vermont Yankee Nuclear Power Station

The ALSB, a quasi-judicial arm of the NRC that deals with licensing matters, heard oral argument on requests for a hearing on the Vermont Yankee license renewal application on August 1. The session was open for public observation, but participation was limited to the parties involved in the proceeding. The states of Vermont and Massachusetts; the New England Coalition, a nuclear watchdog organization; and the Town of Marlboro, Vermont submitted requests for an evidentiary hearing on the application. The ASLB panel heard oral argument on the admissibility of some of the issues that were raised in these filings and will determine, at a later date, whether a hearing should be granted.

The Vermont Yankee Nuclear Plant is a boiling water reactor located in the town of Vernon, Vermont. Entergy Nuclear Operations, Inc. submitted a renewal application for the operating license of the plant on January 25, 2006. The current operating license expires on March 21, 2012. NRC staff have determined that the application contains sufficient information for the agency to "docket," or file, the application and begin a technical review. A notice of opportunity to request a hearing was published in the *Federal Register* in March 2006.

The Vermont Yankee renewal application can be found online at http://www.nrc.gov/reactors/operating/licensing/renewal/applications/vermont-yankee.html. Documents pertaining to the ASLB proceeding are available at http://www.nrc.gov/reading-rm/adams/web-based.html.

Pilgrim Nuclear Power Station

NRC staff met with Entergy representatives on July 19 to discuss the audit findings related to the Pilgrim license renewal application. NRC performs audits early in the license renewal review process to evaluate whether the application is consistent with established guidance and NRC staff positions. Additional technical reviews, including inspections, of the application will take place over the next 12 months. The conclusions from the audits, technical reviews and inspections will be incorporated into a safety evaluation report, which the NRC expects to issue next July.

The Pilgrim Nuclear Plant is a boiling water reactor located on the western shore of Cape Cod bay in the town of Plymouth, Massachusetts. Entergy Nuclear Operations, Inc. submitted an application to renew the operating license for the plant on January 25, 2006. The current operating license expires on June 8, 2012. NRC staff have determined that the application contains sufficient information for the agency to "docket," or file, the application and begin a technical review. A notice of opportunity to request a hearing was published in the *Federal Register* in March 2006.

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

Brunswick Nuclear Power Plant

The operating licenses of the Brunswick Steam Electric Plant, Units 1 and 2, have been renewed for an additional 20 years. After carefully reviewing the plant's safety systems and specifications, NRC staff concluded that there were no safety concerns that would preclude license renewal, because the

licensee had demonstrated effectively the capability to manage the effects of plant aging. Renewal of the licenses was recommended by the Advisory Committee on Reactor Safeguards on May 17.

The Brunswick Plant is located just north of Southport, N.C., and the current operating licenses for Units 1 and 2 were set to expire on September 8, 2016 and December 27, 2014, respectively. The licensee, Carolina Power and Light Company (now doing business as Progress Energy Carolinas, Inc.) submitted the renewal application on October 20, 2005. A public meeting was held on November 4, 2005 in Southport, N.C. to discuss how the agency will review the application. The final EIS, issued on April 18, 2006, contains NRC staff's conclusion that there are no environmental impacts that would preclude license renewal for an additional 20 years of operation.

A copy of the Brunswick relicensing application is available on the NRC web site at http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html. The Brunswick final EIS is available at http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1437/supplement25/index.html.

Oyster Creek Nuclear Generating Station

On July 28, 2005, 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, 2005. Subsequently, NRC held a public meeting in late August 2005 to discuss how the agency will review the application. In September 2005, 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 12, 2005, NRC announced the opportunity to request a hearing on the application. The environmental scoping process concluded on November 15, 2005.

The findings of the environmental review—contained in a draft supplemental environmental impact statement—were issued in June 2006. The preliminary conclusion is that there are no environmental impacts that would preclude renewal of the operating license. The document is open for public review until September 8. NRC expects to issue a final environmental report in January 2007.

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

NRC Regulations/Status of Renewals

Under NRC regulations, a nuclear power plant's original operating license may last up to 40 years. License renewal may then be granted for up to an additional 20 years, if NRC requirements are met. To date, NRC has approved license extension requests for 44 reactor units. In addition, NRC is currently processing license renewal requests for several other reactors.

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

North Anna and Clinton ESP Reviews Continue

In early July, the U.S. Nuclear Regulatory Commission announced that it is seeking public comment on its revised evaluation of the environmental impacts of issuing an Early Site Permit (ESP) for the North Anna site in Louisa County, Virginia—about 40 miles northwest of Richmond. Shortly thereafter, on July 24, NRC announced that it has issued a final environmental impact statement on the proposed ESP for the Clinton site, about six miles east of Clinton, Illinois.

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.

North Anna ESP Review

The original North Anna application was filed by Dominion on September 25, 2003. If approved, the permit would give Dominion up to 20 years to decide whether to build one or more nuclear power plants on the site and to file an application with the NRC for approval to begin construction.

NRC staff's preliminary recommendation is that a permit should be issued for the site. The staff's conclusion is based on its independent review of a report submitted by Dominion Nuclear North Anna, LLC—taking into account consultations with federal, state, tribal and local agencies. The staff's preliminary conclusions include a finding that no environmentally preferable or obviously superior sites have been identified, and that any adverse environmental impacts from possible site preparation and preliminary construction activities at North Anna could be redressed.

The preliminary evaluation on the environmental impacts of issuing an ESP for the North Anna site is contained in the Supplement to NUREG-1811, "Draft Environmental Impact Statement (EIS) for an Early Site Permit at the North Anna ESP Site" (SDEIS). The supplement focuses on the impact of increased power output for the two nuclear power plants postulated in the application, as well as a change in the cooling system for one of the postulated plants.

NRC staff held a meeting to obtain comments on the SDEIS in Mineral, Virginia on August 15. Prior to the meeting, staff hosted an informal discussion at a local school.

NRC staff is accepting public comments on the SDEIS for 45 days following the publication of a notice in the *Federal Register*. Written comments on the SDEIS may be submitted either by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop T-6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or via e-mail to North_Anna_comments@nrc.gov. At the conclusion of the public comment period, NRC staff will consider and address the comments provided, then issue a final EIS on the environmental acceptability of an ESP at North Anna by the end of 2006.

The supplement and related documents regarding the North Anna ESP application are available at http://www.nrc.gov/reactors/new-licensing/esp/north-anna.html.

Clinton ESP Review

Exelon Generation Company, LLC on September 25, 2003, filed the Clinton application. 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.

NRC staff's final EIS on the proposed Clinton ESP finds that there are no environmental impacts that would prevent issuing the ESP. Combined with the recent issuance of a final Safety Evaluation Report on the application, this marks the end of the staff's technical review on the Clinton ESP, although

additional steps must be completed before the NRC reaches a final decision on the matter.

The NRC 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 organizations, and consideration of comments received during the public scoping process. The staff's conclusions include a finding that there are no obviously superior alternative sites, and that any adverse environmental impacts from possible site preparation and preliminary construction activities at Clinton could be redressed.

With the technical review complete, the Atomic Safety and Licensing Board Panel must conduct a mandatory hearing on the matter before the Commission can reach a final decision on issuing a permit. The NRC expects to finish this process for the Clinton ESP by mid-2007.

The final EIS and related documents are available at http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1815/.

Comment Period Closes on National Source Tracking System

On July 28, 2006, the U.S. Nuclear Regulatory Commission ended the comment period—which the agency had extended in June—on the change in basis for the proposed rule implementing a National Source Tracking System (NSTS) to enhance controls for certain sealed radioactive materials used in industry, academia and medicine. The change in basis is from the NRC's authority to promote the common defense and security to the NRC's authority to protect public health and safety. Comments on the rulemaking are available to the public in their entirety on the NRC rulemaking web site. Personal information has not been removed.

The Federal Register notices and other documents related to this rulemaking are available at http://ruleform.llnl.gov/cgi-bin/library?source+&library=tracking_lib&file=*&st=prule.*

NRC Discusses LES Inspection Program

On August 10, U.S. Nuclear Regulatory Commission officials held a public meeting in Eunice, New Mexico to discuss the NRC's inspection program for a gas centrifuge uranium enrichment plant—called the National Enrichment Facility—to be constructed and operated by Louisiana Energy Services in Lea County. During the course of the meeting, NRC inspection staff discussed the agency's inspection process, areas to be inspected, construction inspection objectives, and enforcement of NRC requirements.

NRC staff issued a license to LES to construct and operate the gas centrifuge uranium enrichment plant on June 23, 2006. The license—which is the first ever issued by NRC for a full-scale uranium enrichment plant—authorizes LES to enrich uranium up to 5 percent of the fissile isotope uranium-235 for use in the manufacture of nuclear fuel for commercial power plants.

For additional background information, see LLW Notes, May/June 2006, pp. 17 – 18.

NRC to Establish Office of New Reactors

On July 24, the U.S. Nuclear Regulatory Commission announced that it is reorganizing its Office of Nuclear Reactor Regulation (NRR) to create an Office of New Reactors (NRO) "to ensure effective oversight of operating nuclear power plants and prepare for the industry's interest in licensing and building new nuclear power plants in the near term." In addition, the agency is adding a new organizational unit to oversee inspections related to expected new construction of nuclear facilities. A Deputy Regional Administrator for Construction in the agency's Atlanta office will head the new organizational unit, which will focus on the agency's Construction Inspection Program. This program will be responsible for NRC oversight of any new nuclear power plant construction for the entire country.

"This change will ensure we maintain our focus on the safe and secure operation of existing nuclear power plants, while enhancing our effectiveness in processing the anticipated new plant licensing workload," said Executive Director for Operations Luis Reyes.

NRC expects that the Office of New Reactors will be established by January 2007. NRO will have full responsibility for licensing and program oversight of new reactor activities, while NRR will retain full responsibility for licensing and program oversight for activities related to the current operating reactors. NRC anticipates the filing of several applications for new nuclear power plants in late 2007 and early 2008, with initial construction activities to begin soon thereafter.

NRC Names Directors in Reorganization

In early August, the U.S. Nuclear Regulatory Commission announced the appointment of four program office directors as part of the agency's reorganization. The appointments are as follows:

- Bill Borchardt will become Director of the Office of New Reactors (NRO) when that office is officially established in January. The NRO was recently approved by the Commission to prepare for an expected series of applications for new power reactor licenses. (See related story, this issue.) Borchardt is currently Deputy Director of the Office of Nuclear Security and Incident Response.
- Jim Dyer, who currently serves as the Director of the Office of Nuclear Reactor Regulation (NRR), will remain in that post as the revamped office focuses on the effective regulation and safe operation of the nation's current fleet of commercial power reactors.
- Charles Miller will become Director of another new program office, provisionally to be called the Office of National Materials Program, which is expected to become operational in October. This new office will combine the Office of State and Tribal Programs (STP) with elements of the current Office of Nuclear Material Safety and Safeguards (NMSS) that deal primarily with materials licensing, rulemaking and decommissioning. Miller is currently Director of the Division of Industrial and Medical Nuclear Safety, part of NMSS that will transition to the new program office.
- Jack Strosnider, Jr. will continue as Director of NMSS with its new focus on the nuclear fuel cycle, from uranium processing through fuel manufacturing and reprocessing, transportation, and spent fuel storage and disposal.

Deputy directors and the remainder of the senior management for each office will be identified in the coming weeks.

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- NRC Reference Library (NRC regulations, technical reports, information digests, and regulatory guides). ..... **www.nrc.gov**

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

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- 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**

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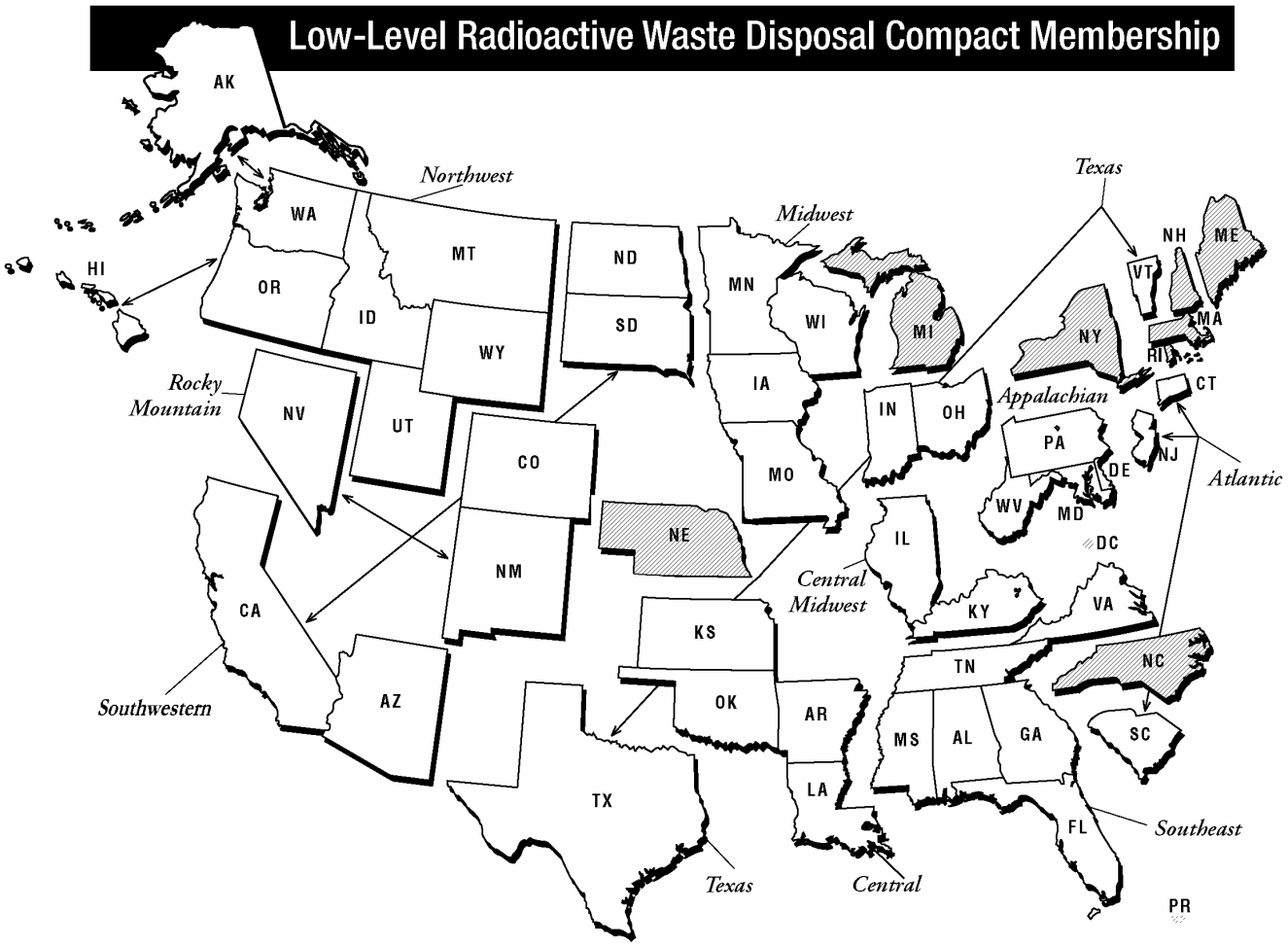
LLW Notes, LLW Forum Meeting Reports and the *Summary Report: Low-Level Radioactive Waste Management Activities in the States and Compacts* are distributed to the Board of Directors of the LLW Forum, Inc. As of March 1998, *LLW Notes* and LLW Forum Meeting Reports are also available on the LLW Forum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

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



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