LLW notes

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Atlantic Compact/State of South Carolina

Legislation Introduced to Keep Barnwell Open to Out-of-Region Waste

On Thursday, February 15, 2007, Chairman William D. Witherspoon of the House Agriculture Committee introduced legislation that would allow the Barnwell, South Carolina low-level radioactive waste disposal facility to continue taking a limited amount of non-compact waste through fiscal year 2023. Under current law, the facility would be open only to the Atlantic Compact member states of Connecticut, New Jersey and South Carolina beginning July 1, 2008.

The Proposed Legislation

The proposed bill, H.3545, strikes the annual volume limit for waste disposed at the Barnwell site from "35,000 cubic feet in fiscal year 2008" and replaces it with a volume limit of "40,000 cubic feet in fiscal year 2008 through fiscal year 2023." So, the effect is to increase fiscal year 2008 volumes from 35,000 to 40,000 cubic feet … and, then to allow up to 40,000 cubic feet per year through 2023.

According to an official at the South Carolina Energy Office's Budget and Control Board, Atlantic Compact generators can be expected to ship between 8,000 to 14,000 cubic feet per year during that period. The board has taken no position on the proposed bill. Instead, its role is to respond to any questions it may get from state officials who are considering the matter.

The proposed legislation is co-sponsored by 30 members of the House—including Representative Lonnie Hosey, in whose district the facility is located. It has been referred to the Committee on Agriculture, Natural Resources and Environmental Affairs.

In introducing the proposed bill, Witherspoon said it is the environmentally and fiscally responsible action to take.

For reference purposes, the text of the current law can be found at http://www.energy.sc.gov/publications/act357.pdf.

Reaction from Lawmakers

Chairman Witherspoon Agriculture Committee Chairman Witherspoon said that he introduced the legislation after determining that the facility is safe

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In This Issue

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The Low-Level Radioactive Waste Forum, Inc. is dedicated to the goals of educating policy makers and the public about the management and disposal of low-level radioactive wastes, and fostering information sharing and the exchange of views between state and compact policy makers and other interested parties.

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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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

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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 Host Next Meeting in San Diego

The Low-Level Radioactive Waste Forum will hold its next meeting on March 19 – 20 at the Bahia Hotel in San Diego, California. The Southwestern Low-Level Radioactive Waste Compact Commission is sponsoring the one and one-half day meeting.

Registration

The meeting is free for members of the LLW Forum, Inc. Non-member registration is $500.00, payable to the "LLW Forum, Inc." 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, March 18, and Monday, March 19 for meeting attendees at the special rate of $129.00 plus tax per night for single or double occupancy. 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 February 15 to obtain the special rate. To make reservations, please call (800) 576-4229 and ask for a room in the "LLW FORUM" block.

Transportation

The Bahia Hotel is located approximately 10 minutes from San Diego International Airport. For information on location, ground transportation and directions, go to www.bahiahotel.com.

Future Meeting Locations and Dates

The fall 2007 meeting will be held in Illinois at the Oak Brook Hills Marriott on October 1 – 2, 2007. The State of Illinois and Central Midwest Interstate Low-Level Radioactive Waste Compact region are sponsoring the meeting.

The Northwest Compact/State of Washington has agreed to host the first meeting in April 2008 at a location to be determined. The Appalachian Compact has agreed to host the fall 2008 meeting in Annapolis, Maryland.

The LLW Forum is currently seeking sponsors and/or hosts for the 2009 meetings. Interested parties should contact Todd D. Lovinger, the organization's Executive Director, at (202) 265-7990.

LLW Forum to Present at Waste Management '07

Various members of the Low-Level Radioactive Waste Forum will give a presentation during the Waste Management '07 Symposium in Tucson, Arizona. The panel presentation—which is scheduled for Monday, February 26th beginning at 1:30 p.m.—is titled "Hot Topics and Emerging Issues in United States Commercial Low-Level Radioactive Waste Management."

Kathryn Haynes, Executive Director of the Southeast Compact Commission, and Susan Jablonski, Radioactive Waste Specialist for the Texas Commission on Environmental Quality, serve as co-chairs of the panel and organized it on behalf of the organization. The LLW Forum's Executive Director, Todd D. Lovinger, will serve as moderator of the panel.

Panelists giving individual presentations will include

- Sean Bushart, Senior Official of the Electric Power Research Institute, a sister organization of the Nuclear Energy Institute;
- Steve Creamer, President and Chief Executive Officer of Energy*Solutions*, Inc.;
- Renee Echols, Senior Vice President of Sales & Marketing for Perma-Fix Environmental Services, Inc.;
- Christine Gelles, Acting Director of the Office of Disposal Operations of the U.S. Department of Energy;
- Lawrence Goldstein, Section Manager for the Nuclear Waste Program of the State of Washington Department of Ecology and Chair-Elect of the LLW Forum, Inc.; and,
- Leonard Slosky, Executive Director of the Rocky Mountain Compact.

The panel will focus on current issues in commercial low-level radioactive waste management in the United States from the perspective of six active LLW Forum members. State, compact, federal and industry views will be shared on topics such as the licensing of new disposal facilities, plans for expanding existing disposal operations, long-term storage of Class B and C low-level radioactive waste, state and compact efforts to address generator needs and concerns, and federal use of commercial disposal options.

(Continued from page 1)

and that it cannot continue to be economically viable within the limitations imposed under the current law. Noting projections that the Barnwell site could incur an annual loss of $3 million to $4 million if current law is not changed, Witherspoon said that keeping Barnwell economically viable is critically important. "Our bill places reasonable limits on the amount of low-level waste the facility can take and we put in a 15-year sunset provision," said Witherspoon. "We believe that is in the best interests of Barnwell County, South Carolina education and the environment."

Witherspoon contends that dipping into the Barnwell site's extended care reserve fund would not be feasible. He argues that, without a change in the law, rates for generators would have to be increased to make up for the projected shortfall and surcharges may be imposed on compact generators. Such increased costs, he notes, would be borne by South Carolina ratepayers. He warns that if use of the site became too expensive, "we might see storage across the State."

As for the safety of the facility, Witherspoon stated as follows: "The facility is safe … There have been no environmental exposures above regulatory limits. DHEC recently renewed the operating license and a judge affirmed DHEC's decision. If state regulators say it's safe, if the court affirms their decision, and if Barnwell County residents support it, then we ought to let the site continue to operate at a sustainable level."

Representative Hosey "If we do not sustain the facility's economic viability, Barnwell County and Barnwell schools will be thrown into an economic crisis," said Representative Lonnie Hosey, in whose district the Barnwell facility is located. "The facility is safe, we need it for jobs and economic growth, and it ought to be allowed to continue current operations."

Reaction from Others

Duke Energy "Duke Energy supports the continued operation of Barnwell as a safe, secure and environmentally sound low-level waste disposal facility," said Bryant Kinney, Duke Energy's Vice President for Regulatory and Government Affairs. "Nuclear power plants provide stable, low cost electricity which enhances the economic competitiveness of South Carolina. An important factor in maintaining the state's competitiveness is the future availability of an economically viable Barnwell. Duke Energy believes that maintaining the economic viability of Barnwell is needed to help ensure that electricity costs stay low."

Progress Energy "We're fortunate to have nuclear generation in South Carolina—now and for the future," said Emerson Gower, Southern Region Vice President for Progress Energy in a statement that he issued. "Representative Witherspoon's proposed legislation is a responsible approach to maintaining the delicate balance between environmental protection and the viability of the Barnwell facility. Without an economically viable Barnwell facility, the cost of waste disposal increases, and that's a cost our citizen's ultimately pay."

Letter from Barnwell Groups to Legislature

On February 14, 2007, a letter supporting the proposed bill to keep the Barnwell site open to out-of-compact waste was sent to members of the Barnwell legislature from the following groups: Barnwell County Council, Barnwell City Council, Snelling Town Council, Williston Town Council, Barnwell County Economic Development Commission, and the Southern Carolina Regional Development Alliance (Hampton, Bamberg, Barnwell and Allendale Counties).

The letter states that persons living and working near the facility are amongst its strongest supporters because they trust in its management, have confidence in its safety and believe it performs a vital public service. The letter also highlights that local taxpayers and schools benefit from the economic stimulus provided by the facility—noting that the facility is responsible for the contribution of more than $430 million to the state's Education Endowment Fund since 1995. Finally, the letter cautions that South Carolina electric customers will bear increased costs imposed upon generators due

to the site's lack of economic viability if the current law is not changed.

In closing, the letter notes that the proposed legislation does not seek to increase the site's capacity and contends that critics are offering misleading and often wrong information. "We believe they are using Barnwell to oppose all nuclear power, which is the cheapest, cleanest and safest source of electricity," the letter concludes.

The text and status of the proposed legislation, press releases and statements from various officials can be found at http://www.truthaboutbarnwell.com.

For reference purposes, the text of the current law can be found at http://www.energy.sc.gov/publications/act357.pdf.

For additional information, contact Deborah Ogilvie, Public Affairs Manager of Chem-Nuclear (EnergySolutions) at (803) 758-1825.

Central Midwest Compact/State of Kentucky

USEC's Paducah Plant Undergoes Performance Review

On January 17, a public meeting was held between officials of the U.S. Nuclear Regulatory Commission and the United States Enrichment Corporation (USEC) in Paducah, Kentucky to discuss the NRC's latest review of regulatory safety performance at the Paducah Gaseous Diffusion Plant. The assessment, known as a Licensee Performance Review, covers the period of operation from September 26, 2004 to October 4, 2004. Members of the public were provided an opportunity to ask questions or make comments to NRC staff after the business portion of the meeting.

NRC staff evaluated performance at the Paducah plant in four major areas: safety operations, radiological controls, facility support, and licensing. Based on the review, NRC determined that the plant continues to conduct its activities in a safe manner. "These meetings give NRC officials a chance to discuss with the company the overall performance at the plant and any concerns we might have," said Victor McCree, Deputy Regional Administrator for Operations for the NRC's Atlanta regional office.

Interested persons may obtain a copy of the results of the review electronically from the NRC's Agencywide Document Access and Management System (ADAMS) at www.nrc.gov/reading-rm/adams.html using accession number ML063480508.

Northwest Compact/State of Utah

Utah Legislature Approves Bill re Disposal Facility Oversight

Legislation Passes with Veto-Proof Majorities

On February 14, 2007, the Utah House approved on the third reading by a vote of 55 to 10 proposed legislation (SB 155) that would, among other things, allow Energy*Solutions* to change operations on its current site without requiring specific approval from the Governor and legislature. Shortly thereafter, the Utah Senate approved a last-minute House amendment to the bill by a vote of 22 to 5. The Speaker of the House signed the bill on February 14 and the President of the Senate signed it on February 15.

The legislation passed with veto-proof majorities in both the House and the Senate. Overriding a veto requires a minimum of 50 votes in the House and 20 in the Senate.

According to a spokesperson, Utah Governor Jon Huntsman, Jr. "has not made a final decision on whether he will sign the bill." Huntsman has 10

days to decide. With 14 days left in the 2007 legislative session, lawmakers would have sufficient time to override a veto.

The Proposed Bill

The purpose of the bill is to exempt certain radioactive waste disposal facilities from certain approval and siting requirements. Specifically, the legislation

- exempts a radioactive waste disposal facility license in effect on or before December 31, 2006 from local government planning and zoning approval, legislative and gubernatorial approval, and certain siting requirements; and,

- exempts an amendment to or renewal of a radioactive waste disposal facility license in effect on or before December 31, 2006 from local government planning and zoning approval, legislative and gubernatorial approval, and certain siting requirements unless the amendment or renewal would authorize waste disposal at a different geographic location.

The Senate Natural Resources, Agriculture and Environment Committee had previously approved the bill without dissent on January 24 and it passed the full Senate on February 7 by a vote of 22 to 5. The House Committee then approved the bill with a favorable recommendation by a vote of 13 to 2 on February 12 before sending it to the full House for consideration.

Utah Senator Darin Peterson is the chief sponsor of the bill. Co-sponsors include state Senators Bramble, Buttars, Christensen, Dayton, Dmitrich, Eastman, Hickman, Killpack, Knudson, Madsen, Niederhauser, Stephenson, and Stowell.

Application to Energy*Solutions'* Clive Facility

Supporters of the bill, including the Utah Mining Association and Tooele County's three commissioners, say it will not have any impact on the regulatory process. Opponents, including Healthy Environment Alliance of Utah, argue that it removes political accountability for nuclear waste expansion.

Energy*Solutions*' Clive facility is seeking to increase its disposal cell from the current 54 feet to a new maximum of 83 feet. Although environmentalists have objected to the proposed change, supporters assert that it is better to pile material safely in a small footprint than to spread it around in a larger site. Passage of SB 155 in its current format would allow Energy*Solutions* to make the requested change without gubernatorial or legislative approval, although any amendments to the company's license would still need to be reviewed and approved by state regulators.

Background and Prior Legislation

A 1990 state law requires that all applicants seeking to license a new hazardous or radioactive waste disposal facility in Utah (or to renew or amend an existing application) must receive approval from political leaders (including the legislature and the Governor) in addition to regulators.

On January 18, 2006, Utah State Senator Howard Stephenson (R) introduced SB 70—a bill that would effectively allow the legislature with a two-thirds vote to override a governor's decision to halt changes in a disposal operation or the creation of a new disposal facility. The bill was heard in the Senate Natural Resources, Agriculture, and Environment Committee and passed out with a favorable recommendation 3 to 2 to the full Senate. (See *LLW Notes*, January/February 2006, p. 10.) The bill passed the Senate by a vote of 22 to 6 and the House approved it by a vote of 47 to 27. On March 1, 2006, Utah Governor Jon Huntsman, Jr. vetoed the bill. The Senate subsequently overrode the Governor's veto, but the House failed to take it up before adjournment of the 2006 Utah Legislature. (See *LLW Notes*, March/April 2006, p. 8.)

Energy*Solutions* Acquires Parallax, Inc.

On January 17, Energy*Solutions* announced that it has acquired Parallax, Inc., an environmental clean-up, engineering and management company that provides services to the nuclear industry. Parallax—which is headquartered in Germantown, Maryland—serves various public and private sector clients including several federal agencies, national labs, the military, and commercial nuclear power companies. Parallax has particular expertise in nuclear facility and criticality safety in power generation, fuel manufacturing, enrichment, research, reprocessing and waste storage and disposal.

Margie Lewis, who is the current CEO of Parallax, will now serve as President of Federal Services for Energy*Solutions.*

Company Information

Energy*Solutions* Energy*Solutions* was formed in February 2006 from the merger of BNG America, Envirocare of Utah, and Scientech D&D. "The combined companies have provided specialized nuclear services in the United States market for over 20 years including high consequence nuclear operations, such as high level waste management, spent fuel handling and transportation; complex D&D projects of nuclear reactors and highly radioactive nuclear facilities; high-end technical challenges such as fuel sludge treatment and high level waste treatment; and major decommissioning of both government and commercial nuclear facilities." Steve Creamer, formerly the President and CEO of Envirocare, serves as Chief Executive Officer of Energy*Solutions.*

Parallax, Inc. Margie Lewis, an engineer with 25 years of government, consulting and industry experience, founded Parallax in 1992. The company has 150 employees with offices in New Mexico, Ohio, Tennessee, Nevada, South Carolina and Maryland. In addition, Parallax jointly manages 230 employees in its LATA/Parallax Portsmouth, limited liability corporation. Parallax has particular expertise in nuclear facility and criticality safety in power generation, fuel manufacturing, enrichment, research, reprocessing and waste storage and disposal.

Company Statements

"We are delighted to have Parallax join the Energy*Solutions* family," commented Energy*Solutions*' CEO Steve Creamer in announcing the acquisition. "It is a quality organization with quality leadership … Our mission is to provide the nuclear industry a full range of services across the nuclear fuel cycle. This acquisition adds capabilities that will allow us to provide a greater range of services to the industry."

"As our company has matured, we have looked for opportunities that would allow us to better serve our customers," said Parallax' CEO Margie Lewis. "Joining Energy*Solutions* at this time is the right move to help us accomplish that goal. I agree with Energy*Solutions*' vision for the nuclear industry and believe that my team can help them accomplish their goals."

Prior Acquisitions by Energy*Solutions*

Energy*Solutions* was formed in early 2006 when BNG America, Envirocare of Utah, and Scientech D&D merged to create "a national energy services company headquartered in Salt Lake City, Utah, that … will manage over 1000 employees in 14 states with operating support facilities in Virginia, South Carolina, Massachusetts, Tennessee, Washington State, Connecticut, Idaho, and Utah." (See *LLW Notes*, January/February 2006, pp. 1, 6.)

Shortly thereafter, Energy*Solutions* acquired Duratek—a Columbia, Maryland-based radioactive waste disposal company that, among other things, operates the Barnwell low-level radioactive waste disposal facility in South Carolina. With the acquisition of Duratek, Energy*Solutions* more than doubled its work force to 2,500 persons in 40 states

and increased its annual revenue by approximately $280 million based on prior Duratek financial statements. (See *LLW Notes*, January/February 2006, p. 7.)

Then, on December 4, 2006, Energy*Solutions* EU announced that it has completed the acquisition of Safeguard International Solutions Ltd—a leading provider in the United Kingdom of turn-key services for the dispositioning of radioactive materials (including waste) from non-nuclear power generating facilities. The acquisition marked Energy*Solutions*' first acquisition in the UK that, according to the company, demonstrates its "commitment to work in the UK and grow its business here." (See *LLW Notes*, November/December 2006, pp. 14 – 15.)

For additional information, contact Mark Walker of EnergySolutions at (801) 231-9194.

Northwest Compact/State of Washington

Audit Reveals Falsified Records at Hanford

Falsified compaction records for the low-level radioactive waste disposal facility at the Hanford nuclear reservation were recently found during a routine audit by S.M. Stoller Corporation, the subcontractor for operation of the Environmental Restoration Disposal Facility. Federal and state officials are investigating the problem and plan to take appropriate corrective action.

Under the facility's operating procedures, a technician is supposed to use instruments to test the compaction at least once each shift. Compaction is done to pack the material to meet specified density standards that are designed to prevent settling that could comprise the integrity of an impermeable cap that is planned to cover the waste. The standards vary according to each type of material.

During an audit on January 12, Stoller officials noted that one worker listed results at times when there was no record of that worker being in the area. Upon questioning, the worker admitted entering data without performing the tests on occasion over the last year. Another employee has been doing most of the compaction tests in recent months, and the worker that made the false entries no longer works for Stroller. The company has determined that no other data that could compromise the facility were falsified, but the extent of the falsified compaction test results are unknown and remain under investigation.

The landfill is a repository for contaminated soil and mildly radioactive debris from the cleanup of Hanford, a federal site where material was made for atomic and hydrogen bombs starting in World War II. Officials from the U.S. Department of Energy and U.S. Environmental Protection Agency are monitoring the situation, but have not yet received sufficient information to draw conclusions on long-term effects. The President of the Washington Closure Hanford, LLC was nonetheless quoted in the local press as stating that he believes in the integrity of the landfill and that compaction methods are sound so the likelihood of a problem with the facility should be small.

Rocky Mountain Compact/State of Colorado

Colorado to Extract Uranium from Municipal Water Supplies

On January 30, 2007, the U.S. Nuclear Regulatory Commission announced that it has issued a license to RMD Operations, LLC of Wheat Ridge, Colorado for its system of removing uranium from municipal water supplies to help communities comply with new federal safe drinking water standards. The U.S. Environmental Protection Agency published new standards in 2000, which water treatment facilities are required to comply with as of this year, that limit the amounts of various contaminants in drinking water. The EPA's

limit for uranium, which occurs naturally in groundwater, is 30 micrograms per liter, or 30 parts per billion. Nationwide, up to 2,000 facilities must meet this standard.

Extracting uranium from drinking water to meet the new EPA standard could result in these facilities accumulating enough concentrated uranium to require licensing as a source material by the NRC or an Agreement State. Under current regulations, any material consisting of more than 0.5 percent uranium is considered source material, and any entity possessing more than 15 pounds at a time, or 150 pounds over the course of a year, must be licensed.

Under the license granted to RMD, the company may contract with water treatment facilities in NRC states to remove uranium from their community water supplies and to take possession of the uranium once it is extracted. The program involves storing the collected uranium in RMD's self-contained uranium removal system for disposal in properly permitted or licensed facilities, either as waste or as an "alternate feed" for a uranium mill.

The RMD uranium water treatment program may enable community water systems to remove uranium from drinking water sources to comply with EPA requirements without the need to develop expertise in handling radioactive materials. The program may also allow municipal water authorities to remove the uranium permanently from their environments. As an NRC licensee, RMD will have ownership and/or control of its uranium removal system, its operation, and all licensed materials it contains, including the uranium removed from the treated water.

The license issued by NRC applies to the 16 states under NRC jurisdiction. At RMD's request, NRC sent its environmental assessment to Agreement and non-Agreement States for their review before the license was issued. RMD has applied for similar licenses in some Agreement States.

State of Michigan

Big Rock Point Site Released for Use

The U.S. Nuclear Regulatory Commission has approved a request by Consumer Energy to release a majority of the Big Rock Point nuclear power plant site for unrestricted public use. The approximately 435 acres of land, located near Charlevoix, Michigan, is below regulatory requirements that allow a maximum radiation dose of 25 millirem per year from residual contamination. (The average person in the United States receives about 300 millirem from background radiation each year.) Accordingly, the agency has determined that release of the land for unrestricted use poses no threat to public health or safety.

Big Rock Point's licenses will still apply to the site's dry cask storage facility, where spent nuclear fuel from the plant's 35 years of operation is stored, plus a parcel of land surrounding this facility. Approximately 107 acres of land in total remain under the licenses, the security and protection of which Consumer Energy retains responsibility. The company must maintain $44.4 million in nuclear liability insurance coverage for the facility.

Big Rock Point began commercial operations on March 29, 1963. The facility ceased production on August 29, 1997. Consumer Energy initiated decommissioning shortly thereafter, completing the process (including dismantlement) in August 2006. NRC survey's verified that cleanup met the 25 millirem per year requirement.

NRC's Safety Evaluation Report of the Big Rock Point amendment request can be found on-line at http://www.nrc.gov/reading-rm/adams/web-based.html using accession number ML063410368 in the search field.

Entergy Arkansas, Inc. v. Central Interstate Low-Level Radioactive Waste Commission

Generator Suit Against Central Commission Dismissed

On January 11, the U.S. District Court for the District of Nebraska dismissed a lawsuit filed by six regional generators against the Central Interstate Low-Level Radioactive Waste Commission. The action, which was dismissed with prejudice, sought among other things to preserve the plaintiffs' interest in $5 million in remaining, undisbursed settlement funds from a prior lawsuit. In dismissing the suit, the district court held in part that "there is nothing inequitable about the [Central] Commission keeping $5 million out of more than $145 million obtained by the Commission from the State of Nebraska as a result of the [earlier] judgment."

The six regional generators did not file an appeal with the court.

Prior Lawsuit and Settlement

In 1999, several utilities filed a lawsuit alleging, among other things, that Nebraska had engaged in bad faith in its review of the Boyd County facility license application. (See *LLW Notes*, January/February 1999, pp. 16-17.) The Central Commission, which was originally a defendant in the action, realigned itself as a plaintiff and pursued the case on behalf of the utilities. On September 30, 2002, the U.S. District Court for the District of Nebraska ruled in favor of the Central Commission finding, among other things, that the state's license review process was "politically tainted" by former Governor Benjamin Nelson's administration. (See *LLW Notes*, September/October 2002, pp. 1, 15-17.) The court awarded the compact commission over $151 million in damages. In its order, the court dismissed as premature the utilities' claims for the imposition of a constructive trust or a resulting trust with respect to the monies awarded in the judgment.

Appeals were filed, but the parties subsequently agreed to settle the lawsuit upon the payment of monies from the state. (See *LLW Notes*, July/August 2004, pp. 1, 12-13.) On August 1, 2005, the state paid approximately $145.8 million to the Central Commission.

Distribution of Settlement Funds

In January 2005, the Central Commission's attorney notified the plaintiffs that the commission would be creating a "settlement fund" on August 1, 2005 and that any claims should be submitted to him on behalf of the commission. On March 25, 2005, the plaintiffs submitted a joint claim to the commission for approximately $129.8 million. According to the complaint, the amount of this claim includes the portion of the judgment (89.005%) attributable to the approximately $88.5 million in prepayments from the plaintiffs that were made to the commission under a funding agreement for the proposed facility, plus the prejudgment interest attributable to such payments.

On July 15, 2005, the commission adopted a series of resolutions, including one that determined that the plaintiffs' claims totaled approximately $129.8 million. The resolution approved payment to the generators of approximately $114.75 million—with $15 million being withheld pending investigation, study and consideration of the commission's future role and obligations and pending the commission's determination as to its need for the retention of substantial funds. Other resolutions passed at the same time provided for full payment of the claim of the developer (US Ecology) and reimbursement of the member states for their contributions to the Community Improvement Fund. The resolutions also included a determination that "no need currently exists for the siting, construction and operation of a low-level radioactive waste disposal facility in the Compact region and that no currently available or anticipated funds shall be utilized in pursuit of a disposal facility within the Compact region."

The initial $114.8 million in settlement funds was distributed to the plaintiffs on August 1, 2005. On February 24, 2006, the commission approved the distribution of an additional $10 million to the plaintiffs. On March 23, 2006, James O'Connell, an Executive Consultant for the Central Commission, notified the plaintiffs that the commission's retention of the remaining $5 million was a "final decision" with respect to their claims "though not a final decision regarding the ultimate disposition of the settlement funds retained."

Generators' Lawsuit re Undisbursed Funds

On April 25, 2006, six generators filed suit in the U.S. District Court for the District of Nebraska against the Central Commission seeking, among other things, to preserve the plaintiffs' interest in the $5 million in remaining, undisbursed settlement funds. (See *LLW Notes*, May/June 2006, pp. 12 - 14.)

Initial Funding Agreement The plaintiffs contend that beginning in January 1988 they agreed to advance prepayments to the Central Commission for future disposal services. The prepayments were intended to be used by the commission to meet its pre-licensing payment commitments to US Ecology and to reimburse Nebraska's license review costs. In exchange for the prepayments, the plaintiffs contend that the commission agreed to use its best efforts to site, license, develop and construct a regional disposal facility. Plaintiffs advanced prepayments in a total amount of approximately $88.5 million to the commission under the funding agreement.

Claims The plaintiffs contend that the $88.5 million that they provided in prepayments "were rendered worthless by the State of Nebraska's breach of its good faith obligation in the Facility licensing proceedings." The plaintiffs further assert that by characterizing the retention of $5 million in settlement proceeds as a "final action," the Central Commission "has ostensibly acted to extinguish said claims" thereby leaving the plaintiffs without standing to challenge any future action or decision with respect thereto. In explaining the cause of their legal action, the plaintiffs write as follows:

"Although the Commission has apparently made no decision regarding disposition or expenditure of the retained funds, Plaintiffs bring this action to protect their right and opportunity to review such future decisions and to challenge them if and when the facts and circumstances justify such a challenge."

Requested Relief Specifically, the plaintiffs are requesting that a trust be imposed on the $5 million withheld by the Central Commission from the plaintiffs' claims until such time as the parties' rights thereto shall have been fully adjudicated by the court and such other and further relief as the court may deem just and equitable.

Dismissal of the Generators' Lawsuit

On January 11, 2007, the district court issued an order granting the defendant Central Commission's motion for summary judgment and denying the plaintiff major generators' motion for summary judgment, thereby dismissing the suit with prejudice. In so doing, the court held that the plaintiffs failed to establish the factual foundation for the imposition of a constructive or a resulting trust.

Under Nebraska law, a "constructive trust" arises when one has acquired legal title to property under such circumstances that in good conscience the party may not retain the beneficial interest in the property. A "resulting trust," on the other hand, arises by implication on the assumption that the parties intended that a trust would exist although they did not express their intent to create one. In either case, the burden is placed upon the party seeking the imposition of a constructive trust or claiming the existence of a resulting trust to establish the factual foundation therefore. In the case at hand, the court found that evidence supporting either trust is not clear, convincing or satisfactory.

In so finding, the court held as follows:

- It is not inequitable for the commission to retain $5 million of the settlement funds (less than 4 percent of the total judgment proceeds)

given that the plaintiffs have recovered all of their principal plus a lot of interest, the commission has an arguable need for money since it is still in existence and will continue in existence for the foreseeable future, and the commission itself suffered damages. The court specifically rejects any suggestions that the commission is nothing more than a "pass-through" entity for the major generators without any independent legal entitlement to the money and without having suffered any independent damages.

- The evidence does not support the plaintiffs' contentions that the parties understood that the major generators would have a reimbursement right with interest if the project were to fail. Indeed, the court held that "there is not the slightest reason to think that the parties had any understanding as to what would happen in the event the project failed because Nebraska breached its obligation of good faith, and a court decided to award damages plus interest to the Commission instead of ordering licensing."
- Examples of "unfair conduct" cited by the plaintiffs are unconvincing. In one instance, the Nebraska Public Power District (NPPD) and the Omaha Public Power District (OPPD) complain that they will receive no help from the commission due to Nebraska's withdrawal from the compact and that it is therefore unfair for the commission to retain their portion of the unreimbursed settlement proceeds. Setting aside the court's holding that the entities have no legal right to the proceeds in the first place, the court finds that the complaint is misplaced and that their grievance lies with Nebraska and not the Commission. In another instance, the plaintiffs complain that smaller claimants such as US Ecology have received full payment of their claims and it is inequitable to treat larger entities less favorably. The court, however, finds that where there is not sufficient money to meet all of the demands of the claimants and still keep the commission in operation, it is fair to allocate the deficiency to the corporations that had (and have) the most to gain from the Commission's success.
- The court will not "second-guess" the commission about whether it really needs the $5 million. According to the court, "the Commission is a creature of federal law charged with very important federal duties …" The court will not substitute its own opinion "for a facially reasonable decision of the Commission like the one that is manifestly present here."

Advisory Committee on Nuclear Waste (ACNW)

ACNW Publishes LLW White Paper

On January 26, the Advisory Committee on Nuclear Waste (ACNW) announced that it had electronically posted NUREG-1853, the ACNW LLW White Paper, on the U.S. Nuclear Regulatory Commission's web site. A paper version of the 207-page report will be printed and made available at a later date once the agency emerges from its current continuing budget resolution.

Individuals and organizations that have previously requested a copy, as well as those on the standard LLW Forum distribution list, are scheduled to receive a paper copy once the NUREG is printed. In the meantime, the ACNW LLW White Paper can be viewed electronically at http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1853/.

Overview

During a March 2005 briefing of the Commission, the ACNW agreed to examine issues associated with the management and disposal of commercial low-level radioactive waste. The Committee began its review by preparing a background report (the "LLW White Paper") that examines "the history and current status of commercial LLW disposal in the United States as well as the reasoning and approach used to develop the NRC LLW regulations in 10 CFR Part 61."

A preliminary version of the paper was transmitted to the Commission in December 2005—together with a list of areas within NRC existing LLW regulation that could be risk-informed to improve the effectiveness of LLW regulation—and discussed during a February 2006 briefing. It subsequently underwent editorial and limited external peer review that resulted in minor modifications and revisions as well as three key enhancements.

The ACNW's LLW White Paper is intended to serve as a background document and includes a review of literature on the issue of commercial LLW management and disposal. The paper is organized into three parts.

- Part I provides a historic perspective of past programs for the management and disposal of commercial LLW including a history of the national LLW program and the tracking of state efforts to site new disposal facilities following the establishment of the interstate compact system. Part I concludes with a current status of the national program, which includes recent efforts by the states to site new disposal facilities.

- Part II describes NRC's commercial LLW regulatory framework found at Title 10, Part 61 ("Licensing Requirements for Land Disposal of Radioactive Waste") of the *Code of Federal Regulations*. It includes a review of the waste classification system and DOE's efforts to manage commercial greater-than-Class C LLW.

- Part III summarizes past ACNW advice in this area, as well as advice provided previously by the Advisory Committee on Reactor Safety (ACRS) before the establishment of the ACNW in 1988. Principal observations are generally classified into the following six areas: general LLW management issues, NRC LLW regulatory framework, ground-water monitoring, chemically mixed radioactive waste, performance assessment, and waste package and waste form.

Six appendices are included as part of the LLW White Paper which, among other things, describe the U.S. Department of Energy's approach to the management of government-owned LLW and the regulatory evolution of the "low-level radioactive waste" definition.

Several emerging staff initiatives that could have a bearing on the management of commercial LLW are also identified in the paper including

- the updating of its strategic planning in the LLW area following a Commission-directed reduction in the program about 10 years ago;
- reviewing of past guidance on LLW storage;
- responding to a 2005 Commission order regarding the disposal of large quantities of depleted uranium; and
- addressing 10 CFR Part 20.2002, "Method for Obtaining Approval of Proposed Disposal Procedures," exemption issues.

The paper also identifies other ongoing initiatives by outside organizations and agencies including

- the recently-completed National Academy of Sciences low-activity radioactive waste study,
- a new U.S. Government Accountability Office review of best LLW management practices, and
- the ongoing U.S. Environmental Protection Agency advance notice of proposed rulemaking on low-activity radioactive waste.

Related Activities

In May 2006, the ACNW hosted a working group meeting regarding emerging LLW issues and opportunities to better risk inform the management of these wastes. Observations and recommendations from the meeting were then transmitted to NRC Chair Dale Klein on August 16, 2006. (For a list of observations from the working group meeting that were highlighted in the letter, see *LLW Notes*, September/October 2006, pp. 17 – 19.)

The following is an exact quote from the letter of five recommendations put forth by the Committee based on the working group meeting.

(1) The Committee believes that there is no need to revise NRC's LLW regulations found in 10 CFR Part 61 at this time. The Committee recommends that the Commission develop license conditions and regulatory guidance to better implement the provisions of 10 CFR 20.2002 and 10 CFR 61.58 which give specific authority to implement such guidance.

(2) The Committee recommends that NRC develop guidance permitting management and disposal of unique and emerging waste streams. Such guidance should consider waste types and forms, packaging, and disposal site conditions in a way that is risk-informed and performance-based consistent with the performance criteria in 10 CFR 61.41 to 61.44 and 10 CFR 61.58, as appropriate.

(3) The Committee recommends that NRC should encourage a more risk-informed approach to LLW management that places greater emphasis on the radionuclide content of the waste rather than the waste source or origin.

(4) The Committee recommends examining how NRC and the Agreement States are preparing to regulate potential increases in the storage of Class-B and –C LLW if and when Barnwell closes to out-of-compact waste in July 2008, and no alternative options become available.

(5) The Committee recommends that, because the waste classification provisions in 10 CFR Part 61 are referenced by and included in legislation and other regulations, it is important to identify and evaluate any unintended consequences from changes recommended in this letter. The Committee believes that the incremental changes and improvements suggested in this letter are unlikely to have such unintended consequences.

The ACNW letter can be found at http://www.nrc.gov/reading-rm/doc-collections/acnw/letters/2006/. For additional information, contact Mike Lee of the ACNW at (301) 415-8200.

ACNW Discusses Igneous Activity

On February 13 – 15, the U.S. Nuclear Regulatory Commission's Advisory Committee on Nuclear Waste met in Rockville, Maryland to be briefed on, among other items, a workshop held in 2006 on cement-like materials used for waste treatment, disposal, remediation and decommissioning. The first two days of the meeting were devoted to the Working Group on Igneous Activity White Paper. The working group meeting included discussions on the nature and probability of the kind of activities described in the paper and their consequences related to the proposed Yucca Mountain high-level radioactive waste repository.

At the Committee's prior meetings, in January 2007 and December 2006, committee members were briefed, among other things, on a methodology used for guiding decisions on remediating contaminated sites and proposed revisions to parts of NUREG-0800 related to liquid waste management systems. Committee members also met with the Commission to discuss recent and planned activities.

ACNW reports to and advises the Commission on all aspects of nuclear waste management. ACNW agendas can be found on NRC's web site at http://www.nrc.gov/reading-rm/doc-collections/acnw/agenda/2007/.

Advisory Committee on Reactor Safeguards

ACRS Meets at NRC Headquarters

The U.S. Nuclear Regulatory Commission's Advisory Committee on Reactor Safeguards (ACRS) met at the agency's headquarters in Rockville, Maryland on February 1 – 3, 2007. The meeting, which was open to the public, included discussion of the final review of the 5 percent power uprate application for the Browns Ferry Nuclear Plant Unit 1. During the course of the meeting, the committee also performed the final review of the license renewal application for the Oyster Creek Generating Station.

The ACRS advises the Commission independently from the NRC staff on licensing and operation of nuclear power plants and related safety issues. ACRS meeting agendas may be found on-line at http://www.nrc.gov/reading-rm/doc-collections/acrs/agenda/2007/.

ACRS Elects Officers

The U.S. Nuclear Regulatory Commission's Advisory Committee on Reactor Safeguards (ACRS)—which advises the Commission independently from the NRC staff on the safety and safeguards aspects of nuclear facilities and the adequacy of safety standards—has elected William Shack as Chairman, John Sieber at Vice-Chairman, and Mario Bonaca as Member-at-Large.

Shack, who possesses a bachelor's degree in civil engineering from the Massachusetts Institute of Technology (MIT) and a master's degree and doctorate in applied mechanics from the University of California-Berkley, currently serves as a research program director in the Argonne National Laboratory's Nuclear Engineering Division. Sieber possesses a bachelor of science degree in mechanical engineering from Carnegie Mellon University and has served as the president of Northmont Consulting, Inc. since 1994. Bonaca is a nuclear consultant with more than 30 years of experience in analysis, design and operation support of nuclear power plants. He has a doctorate of physics from the University of Florence, Italy.

Nine other individuals serve as members of ACRS.

U.S. Department of Energy

Manifest Information Management System Update

According to officials at the U.S. Department of Energy, the Manifest Information Management System (MIMS) is now loaded with the full calendar year 2006 data for all three included operating disposal sites.

As usual, DOE is requesting that members and users of the system review the '06 data and notify Doug Tonkay of any discrepancies that are spotted as a means of quality control. Mr. Tonkay can be contacted at (301) 903-7212 or at Douglas.tonkay@em.doe.gov.

Background

The Manifest Information Management System, which was developed by the U.S. Department of Energy in 1986, is a database used to monitor the management of commercial low-level radioactive waste in the United States. Information contained on MIMS is derived from manifests for waste shipments to one closed facility in Beatty, Nevada and three operating facilities in Richland, Washington; Barnwell, South Carolina; and Clive, Utah. Information on volume, radioactivity and number of shipments is contained on reports in MIMS. Waste generators are not specifically identified in the system, but rather are assigned a unique code indicating the state of origin.

Data in MIMS is limited to low-level radioactive waste from utilities, industries including waste brokers/processors, academic/research institutions, medical facilities, and government (state and federal outside DOE). In addition, information on the disposal of naturally-occurring radioactive material (NORM) at the Richland site has historically been included on MIMS, although NORM is outside the scope of this application.

Response to GAO Concerns

The Government Accountability Office (GAO) raised concerns about the usefulness and reliability of data contained on MIMS in a June 2004 report (GAO-04-604) titled "Low-Level Radioactive Waste: Disposal Availability Adequate in the Short Term, but Oversight Needed to Identify Any Future Shortfalls."

In response, inaccuracies in waste disposed at Energy*Solutions*' Clive facilty (formerly known as "Envirocare") were identified and resolved in December 2004. To further address GAO's concerns, a new summary table of information is posted outside of MIMS to provide users with the volume of other waste disposed at the Clive facility that is not reported in MIMS including low-level radioactive waste from DOE, mixed low-level radioactive waste (MLLW), NORM, and byproduct material [also known as 11e.(2)].

The Manifest Information Management System can be found on-line at http://mims.apps.em.doe.gov/.

U.S. Nuclear Regulatory Commission

NRC Approves Final Rule re Design Basis Threat (DBT)

On January 29, 2007, the U.S. Nuclear Regulatory Commission approved a final rule that enhances its security regulations governing the design basis threat (DBT). The rule, which thoroughly addresses public comment on a November 2005 proposed revision of the DBT rule (10 CFR 73.1), imposes generic security requirements similar to those previously enacted by the Commission via orders dated April 29, 2003. It modifies and enhances the DBT based on experience and insights gained during implementation of prior orders, as well as extensive consideration of the 12 factors specified in the Energy Policy Act of 2005. The rule, which will become effective 30 days after issuance, is the first of several planned rules by the Commission related to security at operating nuclear power plants.

Components of the Final Rule

The final rule issued on January 29 provides a general description of attributes of potential adversaries who might commit radiological sabotage or theft or diversion against which licensees' physical protection systems are required to defend with high assurance. A general description of the modes of attack, weaponry and intentions of such adversaries—including multiple, coordinated groups of attackers, suicide attacks and cyber threats—are contained in the final rule. However, guidance documents related to the rule are protected from public disclosure for security reasons.

The "beamhenge" concept proposed in a 2004 petition for rulemaking by the Committee to Bridge the Gap is not included in the final rule. Nor does the rule require protection against a deliberate hit by a large aircraft. Nonetheless, NRC points out that licensees are already required by the agency to take steps to mitigate the effects of large fires and explosions from any type of initiating event and that active protection against airborne threats is addressed by other federal agencies. NRC also notes that it "remains an active partner with other federal and state/local authorities in constant surveillance of the threat environment" and that the agency "will adjust regulatory actions or requirements if necessary."

Statement by NRC Chairman Dale Klein

In regard to the Commission's affirmation of the final design-basis threat (DBT) rule, NRC Chairman Dale Klein issued the following statement:

> Nuclear power plants are inherently robust structures that our studies show provide adequate protection in a hypothetical attack by an airplane. The NRC has also taken actions that require nuclear power plant operators to be able to manage large fires or explosions—no matter what has caused them. Finally, the NRC is actively involved with other federal agencies, including the military, to protect all this nation's infrastructure against such attacks. All that said, the NRC Commission continues to study and discuss the issue of airborne threats against our licenses and will take regulatory action in the future should it be determined that is necessary. The latest DBT rule is one part of a broader effort and by no means is the last chapter on the subject.

Additional Security-Related Rules Under Consideration

NRC is taking a multi-faceted approach to security enhancements at nuclear power plants that, according to Chairman Klein, include "looking at how best to secure existing nuclear power plants and how to incorporate security enhancements into design features of new reactors that may be built in coming years." Other security-related rules being developed by the agency include

- proposals that would add security assessment requirements for new power reactor designs,

- proposals to revise and update requirements for physical protection at existing and new reactors; and,
- proposals to establish how technical requirements, including those related to security, are to be examined in applications for NRC review of new reactor designs and operations.

Additional information about the DBT, the rulemaking and security requirements for NRC licensees can be found at http://www.nrc.gov/security/post-911.html#faqs.

License Renewals Continue to Move Forward

In January 2007, the U.S. Nuclear Regulatory Commission took action with regard to license renewal applications for four nuclear power plants by

- renewing the operating license of the Palisades nuclear plant for an additional 20 years;
- issuing a final environmental impact statement on the proposed renewal of the operating license for the Oyster Creek nuclear plant;
- hosting a public meeting on a draft environmental impact report for the Vermont Yankee nuclear plant license renewal application; and,
- discussing preliminary results at a public meeting of an inspection associated with the license renewal application for the Pilgrim nuclear plant.

During the prior month, December 2006, NRC held two public meetings to discuss how the agency will review the license renewal application for the Wolf Creek nuclear plant and announced that an application for renewal of the operating license for the Shearon Harris nuclear plant is available for public review.

Palisades Nuclear Plant

NRC announced that it had renewed the operating license of the Palisades nuclear plant for an additional 20 years on January 17, 2007. The Palisades plant is located on the eastern shore of Lake Michigan—just 5 miles south of South Haven, Michigan. The licensee, Nuclear Management Company, submitted a renewal application for the plant on March 22, 2005. The current license for the Palisades plant was set to expire on March 24, 2011. With the renewal, the license is extended until March 24, 2031.

On October 23, 2006, NRC issued its final environmental impact statement on the application finding that there are no environmental impacts that would preclude license renewal. Public meetings to discuss the environmental review were held near the plant in July 2005 and April 2006. In addition, NRC conducted inspections of the plant to verify information submitted by the licensee and the Advisory Committee on Reactor Safeguards—an independent body of technical experts which advises the Commission—recommended renewal after reviewing the application.

A copy of the final EIS and other documents related to the Palisades Nuclear Power Plant license application can be found on NRC's web site at http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1437/supplement27/index.html.

Oyster Creek Nuclear Plant

On January 19, NRC announced that it has issued its final environmental impact statement on the proposed renewal of the operating license for the Oyster Creek nuclear plant. The report finds that there are no environmental impacts that would preclude license renewal.

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.

NRC held a public meeting in late August 2005 to discuss how the agency will review the application.

In September 2005, NRC staff began its technical review and announced the opportunity to request a hearing on the application. The environmental scoping process concluded on November 15, 2005. A draft supplemental environmental impact statement was then issued in June 2006 that found that there are no environmental impacts that would preclude renewal of the operating license. In August 2006, NRC issued its Safety Evaluation Report with Open Items for the proposed renewal that concludes that there are no safety concerns that would preclude renewal of the license provided the open items are resolved.

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. The final environmental impact statement can be found at http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1437/supplement28/index.html.

Vermont Yankee Nuclear Plant

Members of the public were provided with an opportunity on January 31 to comment on a draft report that assesses the environmental impact of extending the operating license for the Vermont Yankee nuclear power plant. The report, known as a Draft Supplemental Environmental Impact Statement, was issued on December 13, 2006. It preliminarily recommends that the Commission determine the adverse environmental impacts of license renewal for Vermont Yankee are not so great that preserving the option of license renewal for energy planning decision-makers would be unreasonable. The recommendation is based on the analysis and findings in the Generic Environmental Impact Statement used for license renewal reviews; the plant-specific environmental report submitted by Entergy; NRC consultation with other federal, state and local agencies; the NRC staff's own independent review; and the NRC staff's consideration of public comments received during the environmental scoping process.

The Vermont Yankee 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.

The draft environmental impact report for the Vermont Yankee nuclear plant can be found at http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1437/supplement30/. The Vermont Yankee license renewal application is posted at http://www.nrc.gov/reactors/operating/licensing/renewal/applications/vermont-yankee.html#appls.

Pilgrim Nuclear Plant

On January 30, NRC reported in a public meeting on the preliminary results of an inspection associated with the license renewal application for the Pilgrim nuclear power plant. The purpose of the inspection, which was conducted from September to December of 2006, was to examine whether the plant's program for managing the effects of aging on key safety systems, structures and components is adequate and appropriate for a 20-year license inspection. The aging inspection is one of a number of NRC activities involved in evaluating a license renewal application.

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 published an announcement regarding the opportunity to request a hearing on the license renewal application in the *Federal Register* in March 2006. In July of that same year, NRC staff met with Entergy representatives to discuss audit findings related to the 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. The conclusions from the audits, technical reviews and inspections will be incorporated into a safety evaluation report, which the NRC expects to issue in July 2007.

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

Wolf Creek Nuclear Plant

On December 19, NRC held two public meetings in Burlington, Kansas to discuss how the agency will review an application from the Wolf Creek Nuclear Operating Corporation to renew the operating license for the Wolf Creek nuclear plant. During the information sessions, NRC staff described the agency's license renewal process and how the public can participate. Members of the public were also provided with an opportunity to comment on environmental issues that they believe NRC should consider.

The Wolf Creek Generation Station is a pressurized water reactor located approximately three miles northeast of Burlington, Kansas. Wolf Creek Nuclear Operating Corporation submitted its application for license renewal on October 4, 2006. The current license for the Wolf Creek nuclear plant expires on March 11, 2025. If approved, the plant's NRC license would be extended for 20 years.

The Wolf Creek nuclear plant's license renewal application is available on the NRC web site at http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html.

Shearon Harris Nuclear Plant

On December 8, 2006, NRC announced that an application for a 20-year renewal of the operating license for the Shearon Harris Nuclear Power Plant, Unit 1, is available for public review.

The Shearon Harris plant is a pressurized water reactor located approximately 20 miles southwest of Raleigh, North Carolina. The current operating license expires on October 24, 2026. The applicant, Carolina Power and Light (a subsidiary of Progress Energy), submitted the renewal application on November 16, 2006.

NRC is currently conducting its initial review of the application to determine whether it contains sufficient information for the required formal reviews. If the application has sufficient information, the NRC will formally "docket," or file, it and will announce an opportunity for the public to request an adjudicatory hearing on the renewal request.

The Shearon Harris license renewal application can be found 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 48 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.

ESP Applications Move Forward

On February 13, 2007, the Atomic Safety and Licensing Board—an independent judicial arm of the U.S. Nuclear Regulatory Commission—held a pre-hearing conference regarding arguments on several contentions filed concerning the proposed early site permit (ESP) application for the Vogtle nuclear power plant in Waynesboro, Georgia. Two months earlier, on December 15, 2006, NRC staff issued its final environmental impact statement (EIS) on the proposed ESP for the North Anna site in Louisa County, Virginia.

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. If a permit is granted, the applicant has 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.

Vogtle ESP

The ASLB pre-hearing conference focused on arguments for and against the admissibility of several contentions filed by various groups regarding the application by Southern Nuclear Operating Company for an early site permit for up to two additional reactors at the Vogtle site, 26 miles southeast of Augusta, Georgia. The Vogtle plant currently has two operating reactors. Southern Nuclear submitted the application on August 15, 2006.

The contentions were filed jointly by the Center for a Sustainable Coast, Savannah Riverkeeper, the Southern Alliance for Clean Energy, the Atlanta Women's Action for New Directions, and the Blue Ridge Environmental Defense League. The contentions raise issues under the National Environmental Policy Act (NEPA) concerning the potential impacts of two new reactors on the aquatic resources of the Savannah River, low-income and minority communities nearby, potential terrorist attacks, and energy alternatives. The three-judge ASLB will hear arguments from the petitioners, the NRC staff, and Southern Nuclear. Several weeks after the pre-hearing conference, the board will issue its ruling on whether the petitioners have demonstrated legal standing and raised viable issues that should be admitted as contentions in an adjudicatory hearing regarding the ESP application.

The Vogtle ESP application can be found at http://www.nrc.gov/reactors/new-licensing/esp.html.

North Anna ESP

The final EIS on the proposed North Anna ESP contains the NRC's finding that there are no environmental impacts that would prevent issuing the ESP. The EIS, combined with the recent issuance of a final Safety Evaluation Report on the application, marks the end of the staff's technical review—although additional steps must be completed before the NRC reaches a final decision on the matter. The ASLB must conduct a mandatory hearing on the matter before the Commission can reach a final decision on issuing the permit. NRC expects to finish this process for the North Anna ESP by the end of 2007.

Dominion Nuclear North Anna filed the original North Anna application on September 25, 2003. In October 2006, NRC staff issued a supplement to the North Anna ESP safety evaluation report (SER) containing the staff's preliminary recommendation 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—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 final EIS and related documents regarding the North Anna ESP application are available at http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1811/sr1811.html.

NRC Hosts Meeting re Plant Physical Security Requirements

On February 14, the U.S. Nuclear Regulatory Commission hosted a public meeting at its headquarters in Rockville, Maryland to discuss a proposed rule amending its security regulations related to the physical protection of nuclear power reactors. The proposed rule is one of a series to enhance requirements for access controls, event reporting, security personnel training, coordination between safety and security activities, contingency planning and protection against radiological sabotage. The proposed rule would also add requirements related to background checks for firearm users and authorization for enhanced weapons to fulfill certain provisions in the Energy Policy Act of 20005. In addition, the proposed rule

includes a limited number of new security requirements for certain facilities that manufacture uranium fuel.

The proposed rule incorporates requirements that the Commission previously imposed through orders issued after the terrorist attacks of September 11, 2001. In addition, the proposed requirements for safety/security interface address in part a Petition for Rulemaking (PRM 50-80) which requested regulations for governing proposed changes to facilities that could adversely affect the licensees ability to protect against radiological sabotage.

The proposed rule was published in the *Federal Register* last year inviting comments from the public. The comment period expired on February 23, 2007.

The proposed rule may be found at http://ruleforum.llnl.gov/cgi-bin/library?source=&library=secreq_lib&file=*&st=prule. In addition, more information about security requirements for NRC licensees may be found on the agency's web site at http://www.nrc.gov/reading-rm/doc-collections/fact-sheets/safety-security.html.*

NRC Enforcement Policy Revisions Proposed

The U.S. Nuclear Regulatory Commission is seeking public comment on a proposed revision to the agency's Enforcement Policy, which contains policy and procedures that the agency uses to initiate and review enforcement actions in response to violations of NRC requirements. NRC does not intend to modify the agency's emphasis on compliance with its requirements.

The revision seeks to clarify terminology and address enforcement issues in areas not currently covered, including the agency's use of Alternative Dispute Resolution in the enforcement process. In particular, NRC is requesting comments on what specific topics should be added or removed from the policy and what topics currently addressed require additional guidance.

The comment period closes on March 26, 2007.

For additional information, see the Federal Register notice at http://a257.g.akamaitech.net/7/257/2422/01jan2007/1800/edocket.access.gpo.gov/2007/pdf/E7-1088.pdf.

FY 2008 NRC Budget Request Released

On February 5, the U.S. Nuclear Regulatory Commission released its proposed $916.6 million budget request for fiscal year 2008 to Congress. According to NRC, the budget request will be used to cover NRC's work "to effectively regulate nuclear power plants and other uses of nuclear materials to protect people and the environment."

The proposed budget, which is offset by $765.1 million in fees that the agency is required to collect from its licensees, is higher than the fiscal year 2007 budget. The increase is primarily requested to support the review of twelve of the new reactor applications anticipated to arrive in 2008, two standard reactor design certification applications, three early reactor site permit applications, and the development of the reactor construction inspection program. Modest decreases are included in the budget request for regulation of nuclear materials and waste safety.

For additional information on NRC's fiscal year 2008 budget request, see NUREG-1100, Vol. 23, on NRC's web site at www.nrc.gov.

McGaffigan to Leave NRC

On January 5, 2007, the U.S. Nuclear Regulatory Commission announced that Commissioner Edward McGaffigan, Jr. would leave the regulatory body upon confirmation of a successor. McGaffigan, a 31-year veteran of public service and member of the Commission since 1996, is the longest-serving member in the NRC's 32-year history and the only member to have served over 10 years.

McGaffigan announced his intention in letters to President Bush and Senate Majority Leader Harry Reid, both dated January 4, 2007. In the letters, McGaffigan states that he is battling an aggressive recurrence of metastatic melanoma and that his life expectancy is limited. He further states that he will resign upon confirmation of a successor by the Senate. "My hope is that you will be able to pair the nomination of my successor with that of Commissioner Jeffrey Merrifield's successor and that will in turn ease Senate confirmation of your nominees and help maintain a full five-member Commission," states McGaffigan in his letter to President Bush. Merrifield, whose term ends on June 30,2007, notified White House Chief of Staff Joshua Bolton in October 2006 that he would not be seeking a third term at the agency. (See *LLW Notes*, November/December 2006, p. 26.)

"Ed McGaffigan has made exceptionally valuable contributions to the work of the NRC over the past decade," said NRC Chairman Dale Klein. "Our thoughts and prayers are with him and his family."

Commissioner McGaffigan's current biography is available on the NRC's web site at http://www.nrc.gov/who-we-are/organization/commission/mcgaffigan.html.

NRC Recalls Ford Contributions

In a press release mourning the loss of former President Gerald R. Ford, the U.S. Nuclear Regulatory Commission noted that one of his early accomplishments as President was signing the Energy Reorganization Act of 1974—thereby creating the NRC. Ford, who was the 38th President of the United States, signed the Act on October 11, 1974. The Act dissolved the Atomic Energy Commission and assigned its regulatory functions to the NRC, effectively separating the regulation of civilian commercial, industrial, academic and medical uses of nuclear materials from the promotion of nuclear power and development of military uses of nuclear energy.

In signing the Act, President Ford said: "The highly technical nature of our nuclear facilities and the special potential hazards which are involved in the use of nuclear fuels fully warrant the creation of an independent and technically competent regulatory agency … NRC will be fully empowered to see to it that reactors using nuclear materials will be properly and safely designed, constructed, and operated to guarantee against hazards to the public from leakage or accident."

In signing the Act, President Ford advanced the plan mandated by Congress for the NRC to enable the nation to use radioactive materials for beneficial civilian purposes while ensuring that public health and safety, common defense and security, and the environment are protected.

NRC Regulatory Conference to be Held in March

The Nuclear Regulatory Commission's Regulatory Information Conference (RIC) is scheduled for March 13 – 15, 2007 at the Marriott Bethesda North in Rockville, Maryland. More than 2,000 people are expected to attend the conference representing more than 17 foreign countries, as well as staff members from the U.S. Congress.

The RIC is a joint presentation of the NRC's Offices of Nuclear Reactor Regulation and Nuclear Regulatory Research. It brings together NRC staff, regulated utilities, materials users and other interested stakeholders to meet and discuss nuclear safety topics and regulatory trends. Speakers at the conference will include NRC Chair Dale Klein and Commissioners Edward McGaffigan, Jeffrey Merrifield, Gregory Jaczko and Peter Lyons. Topics at this year's RIC include licensing new nuclear power plants, communications and security at currently operating plants, inadvertent groundwater contamination events and the agency's ongoing project on the consequences of possible accidents at U.S. nuclear power plants.

The conference is free and open to the public. Parties interested in attending may register on the NRC's web site at http://www.nrc.gov/public-involve/conference-symposia/ric/registration.html. Onsite registration will also be available during the conference.

The conference agenda may be found on NRC's web site at http://www.nrc.gov/public-involve/conference-symposia/ric/program.html.

NRC Gives Web Site a Fresh Look

The U.S. Nuclear Regulatory Commission is giving its web site an entirely new look which will incorporate the agency's new graphic and tagline – *Protecting People and the Environment* – and feature a less cluttered and more public-friendly look. A new Google search engine has also been added to the site at the top of every page to make it easier for visitors to find NRC documents and Web information.

The agency is using a two-step process to reorganize, modernize and streamline the site. The first phase, which was completed in December, involved changing the graphic on about 40,000 pages of the web site to capture the new look. The second phase, which will be completed around mid-March, will reflect the final streamlined format with key agency programs featured prominently. The Office of Information Services is working to complete the new design of the web site before the NRC's Regulatory Information Conference in March 2007. (See related story, this issue.)

During the transition, a table is available on the site that is designed to assist users in locating information that is no longer available from its previous location on the home page. The table can be found at http://www.nrc.gov/site-help/where-did-it-go.html. Web questions or problems should be directed to Jeffrey Main at WEBWORK@nrc.gov or at (301) 415-6845.

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**

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

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

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

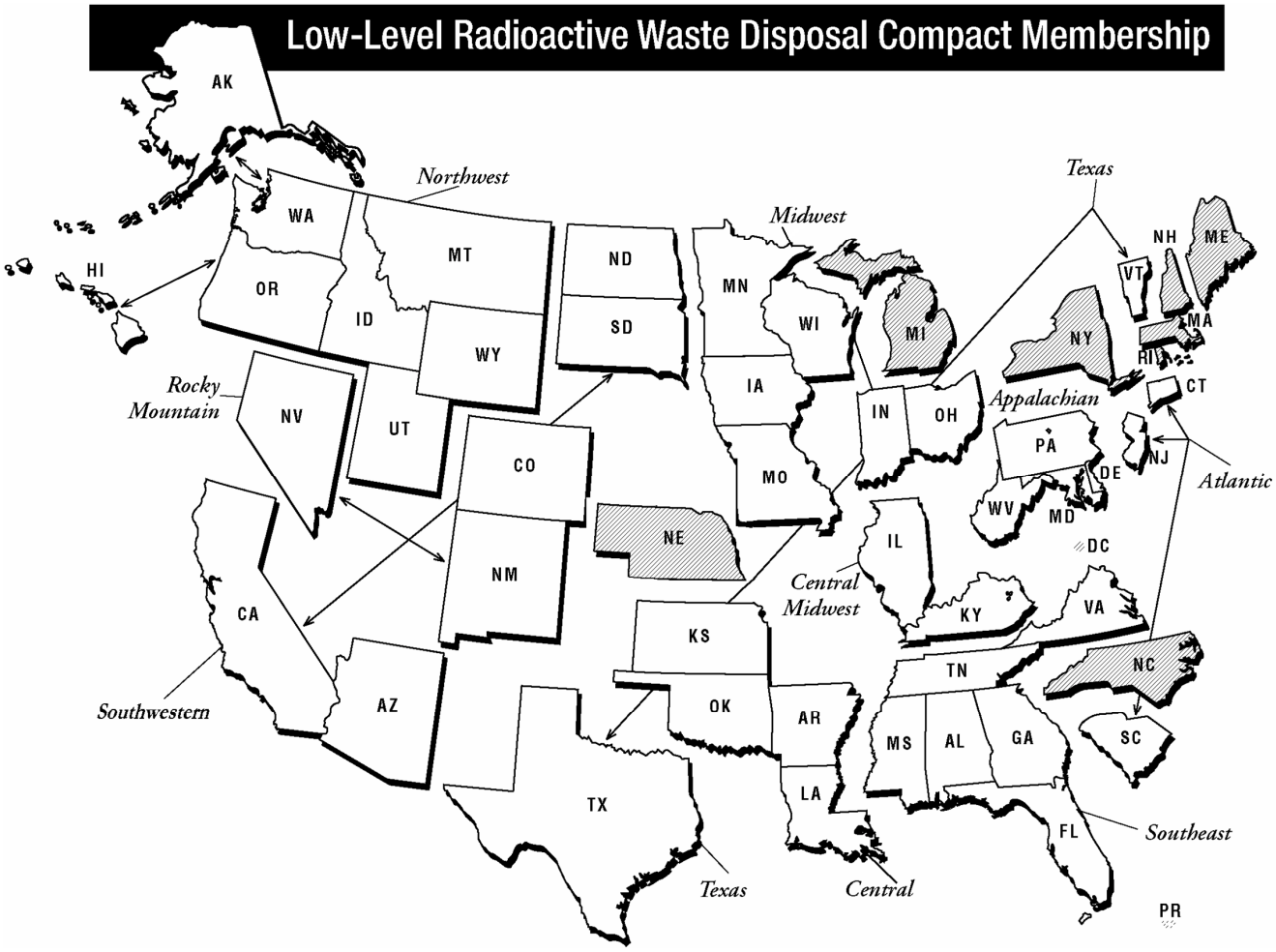
- GAO homepage (access to reports and testimony) .....**www.gao.gov**

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

Accessing LLW Forum, Inc. Documents on the Web

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

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



Appalachian Compact
Delaware
Maryland
Pennsylvania
West Virginia

Atlantic Compact
Connecticut
New Jersey
South Carolina

Central Compact
Arkansas
Kansas
Louisiana
Oklahoma

Central Midwest Compact
Illinois
Kentucky

Northwest Compact
Alaska
Hawaii
Idaho
Montana
Oregon
Utah
Washington
Wyoming

Midwest Compact
Indiana
Iowa
Minnesota
Missouri
Ohio
Wisconsin

Rocky Mountain Compact
Colorado
Nevada
New Mexico

Northwest accepts Rocky Mountain waste as agreed between compacts

Southeast Compact
Alabama
Florida
Georgia
Mississippi
Tennessee
Virginia

Southwestern Compact
Arizona
California
North Dakota
South Dakota

Texas Compact
Texas
Vermont

Unaffiliated States
District of Columbia
Maine
Massachusetts
Michigan
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