

LLW *notes*

Volume 22, Number 6 November/December 2007

U.S. Nuclear Regulatory Commission

NRC Issues Strategic Assessment of LLW Program

The U.S. Nuclear Regulatory Commission recently made public the staff's strategic assessment of the agency's low-level radioactive waste regulatory program. The assessment, which the staff undertook in recognition of significant new and emerging LLW disposal issues and stakeholder concerns regarding the nation's management of commercial LLW, was delivered to the Commissioners on October 17, 2007.

The results of the strategic assessment include a prioritized listing of ongoing and future staff actions and activities, along with associated schedules and resource estimates. As part of the assessment, staff evaluated and prioritized 20 potential activities that NRC could undertake to improve the LLW regulatory framework. In the end, seven of these were ranked as high priority and recommended for further action.

Background

The primary statutory drivers of the NRC's LLW regulatory program are the Atomic Energy Act (AEA) of 1954, as amended—which provides the authority by which NRC regulates the possession and use of nondefense-related radioactive material—and the Low-Level Radioactive Waste Policy Amendments Act of 1985 (LLRWPA).

At the height of the agency's program in 1986, it was staffed by 28 full-time equivalents (FTE's). Currently, the program is staffed by 5 FTE, with more than half of these resources being dedicated to base-line work including import/export licensing, providing technical support to other programs on LLW disposal issues, reviewing and approving 10 CFR 20.2002 alternative disposal requests, and addressing issues identified by the Commission (such as the classification of depleted uranium and 10 CFR 20.2002 transparency measures).

Issues

NRC staff has identified several issues that have arisen and/or grown in importance due to a lack of new LLW disposal capacity including

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As part of that mission, the LLW Forum publishes a newsletter, news flashes, and other publications on topics of interest and pertinent developments and activities in the states and compacts, federal agencies, the courts and waste management companies. These publications are available to members and to those who pay a subscription fee.

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Low-Level Radioactive Waste Forum, Inc.

LLW Notes

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Editor and Writer: Todd D. Lovinger

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

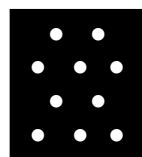
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LLW
FORUM, INC

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 Meetings *2008 and Beyond*

The following information on future meetings of the Low-Level Radioactive Waste Forum is provided for planning purposes only. Please note that the information is subject to change. For the most up-to-date information, please see the LLW Forum's web site at www.llwforum.org.

Spring 2008 Meeting

The next meeting of the LLW Forum will be held at the Marriott Hotel in Richland, Washington on April 28 – 29, 2008. It will be a one-day meeting, followed by a one-day optional site tour of the Hanford reservation. An optional site tour of the Pecos facility is tentatively planned as well.

A meeting bulletin and registration form will be posted on the LLW Forum's web site shortly at www.llwforum.org. Early registration is strongly encouraged as all indicators are that this will be a popular meeting due to the site tours and space may be limited.

The Northwest Compact is hosting the meeting and providing logistical support.

Fall 2008 Meeting

The Appalachian Compact will serve as host of the fall 2008 LLW Forum meeting.

The meeting will be held in Annapolis, Maryland on September 11 – 12 at the Westin Hotel. It will include an optional site tour of the Calvert Cliffs Nuclear Power Plant.

Spring 2009 Meeting

The spring 2009 LLW Forum meeting will be hosted by the Atlantic Compact.

The compact is currently exploring various facilities and locations in South Carolina including Charleston, Columbia and Greenville. Additional

information on the facility and location will be forthcoming.

Other Future Meetings

The LLW Forum is currently seeking hosts for the fall 2009 and for both 2010 meetings. The State of New York has agreed to host one of these meetings, but hosts are being sought for the remaining two meetings at this time.

Although they seem far off, substantial lead-time is needed to locate appropriate facilities. Anyone interested in potentially hosting or sponsoring one of these meetings should contact one of the officers or Todd Lovinger, the organization's Executive Director, at (202) 265-7990.

2008 LLW Forum Invoice Payment Reminder *Due No Later than January 15, 2008*

Payment for 2008 membership dues or subscription fees for services from the Low-Level Radioactive Waste Forum are due no later than January 15, 2008 ... although early payment is encouraged and appreciated. Accordingly, please be sure to timely process your invoice and submit payment in order to avoid a disruption in services.

Invoices were mailed out on Friday, November 2. If you did not receive an invoice, or misplaced it or require another copy for any reason, please notify Todd D. Lovinger, the LLW Forum's Executive Director, immediately at LLWForumInc@aol.com or at (202) 265-7990.

The LLW Forum does not accept credit card payments at this time. Payment must be made either by check or by wire transfer directly to the organization's bank account.

The LLW Forum's federal taxpayer identification number, if needed, is 39-1995104.

Atlantic Compact/State of South Carolina

Barnwell Announces Sealed Source Registration Option

On November 26, a notice was posted on the web site of the South Carolina Energy Office's Budget and Control Board (www.barnwelldisposal.com) regarding a sealed source disposal capacity registration option for the Barnwell low-level radioactive waste disposal facility.

According to the notice, there is a 500 cubic foot "set-aside" for the disposal of sealed sources at the facility through June 30, 2008—the date on which the facility is scheduled to close to out-of-region waste. Brokers and generators may reserve volume for sealed source disposal using the set-aside on a first-come, first-served basis by paying a deposit of \$2,312 per cubic foot—the minimum disposal rate for sealed sources. The deposit is non-refundable unless the Barnwell site is unable to accept the waste. In such case, the exclusive remedy for customers with pre-reserved disposal capacity is the return of any payment made for reservation of the disposal capacity.

Disposal rates will be assessed in accordance with the Rate Schedule for Non-Atlantic Compact Waste, which specifies a minimum disposal rate for sealed sources of \$2,312 per cubic foot. Chem-Nuclear will invoice customers for the difference if the actual disposal rate for a waste container exceeds the per cubic foot deposit rate.

If conditions allow and there is sufficient demand, the volume of the 500 cubic foot set-aside may be increased. On the other hand, some or all of the set-aside volume that is not yet reserved may need to be withdrawn if conditions warrant.

Customers may also dispose of sealed sources without reserving volume in advance if there is capacity available from the sealed source set-aside volume. As of November 30, of the 500 cubic foot

set-aside, approximately 200 cubic feet has now been reserved or is in the process of being reserved.

For additional information, please contact Deborah Ogilvie at Chem-Nuclear at (803) 758-1825 or William Newberry of the South Carolina Energy Office at (803) 737-8037.

Northwest Compact/State of Idaho

Jeffrey Merrifield Appointed to American Ecology's Board

On November 15, 2007, American Ecology Corporation announced the appointment of Jeffrey Merrifield to the company's Board of Directors. Among his other achievements, Merrifield was a two term Presidential appointee to the U.S. Nuclear Regulatory Commission, having completed his second term earlier this year, and worked as a senior staff member of the U.S. Senate.

"Jeff Merrifield's prior experience as a Commissioner of the U.S. Nuclear Regulatory Commission, and as Counsel and Staff Director for the U.S. Senate Environment and Public Work Committee's Subcommittee on Superfund and Waste Control will be a great asset to American Ecology as we continue to execute our growth strategy," stated American Ecology Chairman Kenneth Leung. "His legal background will also bring a valuable perspective to our Board."

Merrifield's appointment brings the number of American Ecology directors to seven. Other board members include Chairman Kenneth Leung, President and Chief Executive Officer Stephen Romano, Roy Eliff, Edward Heil, John Poling and Richard Swope.

Merrifield, who currently serves as Senior Vice President of the Shaw Group's Power Group, has more than 20 years of diverse experience working at the NRC, Congress and as a practicing attorney in

States and Compacts *continued*

Washington, DC. He is a member of the American Nuclear Society and is admitted to the Bar in Washington, DC and New Hampshire. He is 44 years old.

American Ecology Corporation, through its subsidiaries, provides radioactive, PCB, hazardous, and non-hazardous waste services to commercial and government customers throughout the United States including steel mills, medical and academic institutions, petro-chemical facilities and the nuclear power industry. The company, which is headquartered in Boise, Idaho, is the oldest radioactive and hazardous waste services company in the United States.

American Ecology Presents at Investor Growth Conference *Company Raises Annual Earnings Guidance*

On November 9, American Ecology Corporation President and Chief Executive Officer Stephen Romano presented an overview of the company's operations at the Sanders Morris Harris Third Annual Investor Growth Conference. The conference was held at the New York Palace Hotel in New York City. Additional information about the conference can be found at www.smhcapital.com/events/IFC2007.html. A replay of the web cast will be available on American Ecology's web site at www.americaneecology.com for 90 days.

On October 23, American Ecology reported financial results for its third quarter and nine months ended September 30, 2007. The company reported net income of \$4.5 million, up 51% from net income reported for the third quarter of 2006. Revenue from the third quarter of 2007 increased 44% to \$39.4 million, reflecting increased revenue from bundled transportation and disposal projects and other rail-served projects, as well as a steady flow of shipments under the company's multi-year

contract with the U.S. Army Corps of Engineers. Waste disposal volumes at the company's Idaho, Nevada and Texas waste facilities increased 55% in the third quarter of 2007 over the third quarter of 2006 to 269,000 tons. Based on this strong year-to-date performance, management raised its previously issued 2007 earnings guidance.

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American Ecology Corporation trades on the NASDAQ Exchange under the ticker symbol ECOL.

Northwest Compact/State of Utah

Energy Solutions Seeks Authority to Dispose of Waste from Italy

On September 14, 2007, Energy Solutions filed an application with the U.S. Nuclear Regulatory Commission to import up to 20,000 tons of potentially radioactively contaminated material from Italy to the company's licensed disposal facility in Clive, Utah. In conjunction with the import authorization request, Energy Solutions also filed an application for return shipment, to the extent necessary, back to Italy.

Shortly thereafter, on November 19, 2007, Representatives Joe Barton and Ed Whitfield sent a letter to NRC Chairman Dale Klein expressing concern about the proposal and requesting additional information regarding the agency's "regulatory criteria and decision making process for

States and Compacts *continued*

import license applications for large volumes of radioactive wastes imported from foreign countries for disposal here in the United States.” Barton is the Ranking Member of the U.S. House of Representatives Committee on Energy and Commerce. Whitfield is the Ranking Member of the committee’s Subcommittee on Oversight and Investigations.

EnergySolutions’ License Applications

According to correspondence from EnergySolutions, the application to NRC is for “a generic license to allow the importation of up to 20,000 tons of radioactively contaminated material including metals, graphite, dry activity material such as wood, paper, and plastic, ion exchange resins, and liquids such as aqueous and organic based fluids.” As of the date of EnergySolutions’ correspondence, the sources of the material were not fully known. However, EnergySolutions writes that it “will be limited to Italian facilities authorized to use and possess radioactive material such as reactors, fuel cycle facilities, research facilities, and material licensees or facilities equivalent to U.S. Superfund sites.” EnergySolutions continues “It is expected that the material to be imported would be generated during various activities such as remediation, decontamination, decommissioning, maintenance, equipment upgrades, and routine operational activities.” Some of the imported material may be free from contamination, whereas some may only be superficially contaminated and some may be volumetrically contaminated.

EnergySolutions filed the import license application expressly for the purpose of allowing the importation of contaminated material for disposal at the company’s facility in Clive, Utah. However, intermediate uses will also include inspections, surveys, sorting and stabilization (as required) at the company’s licensed facilities in Tennessee. The purpose of the export license application is to allow any waste that may not be disposed in Utah to be returned back to Italy.

It is expected that the Italian waste would arrive in the United States via the ports of Charleston and

New Orleans, wherefrom it would then be transported by truck, barge or rail to EnergySolutions’ processing facilities in Tennessee. After inspection, surveying, sorting and potential treatment or processing, the waste would then be transported for disposal at the company’s facility in Clive, Utah. EnergySolutions estimates that the first shipment of these radioactive wastes would occur in the spring of 2008 and would continue over at least a five-year period.

Included with EnergySolutions’ correspondence to NRC was a Form 7 import application, a Form 7 export application, a letter from the Utah Division of Radiation Control, copies of facility licenses, and an application fee check.

In a statement to local press, EnergySolutions noted that many companies import waste through U.S. ports, citing licenses granted to companies that import uranium cylinders from England and radioactive items from France and the Czech Republic. Indeed, EnergySolutions’ metals facility has imported more than 2.2 million pounds of metals from Germany, Belgium and the United Kingdom since 1995 to be made into shields according to a local press article. In addition, the company’s statement said that the proposed Italian waste represents only two percent of what is currently being sent to two landfills. According to EnergySolutions, the majority of the Italian waste would be processed with the resultant recycled melted metals being sold as shielding blocks for use in nuclear facilities. Only the residual waste—which is anticipated to be less than 80,000 cubic feet—would be sent to the Clive, Utah facility for disposal.

For additional information on EnergySolutions’ applications, contact Tye Rogers, Senior Vice President of Regulatory Affairs, at (801) 649-2000.

Barton and Whitfield Correspondence

According to the November 19 letter from Representatives Barton and Whitfield, their interest in the NRC’s regulations on the import and export of radioactive waste was specifically prompted by

States and Compacts *continued*

EnergySolutions' application to import radioactive waste from Italy. While acknowledging that NRC has reviewed several applications for the import and export of radioactive wastes, Barton and Whitfield write that it is their understanding "that this is the first time NRC has received a license application for the importation and domestic disposal of such a large quantity of radioactive wastes."

After providing a short summarization of the EnergySolutions' proposal and the company's application materials, the letter from Barton and Whitfield states as follows:

Given the apparent unanswered technical questions regarding this proposal, we are interested in how NRC evaluates licenses for import and export of radioactive wastes:

- (1) Does NRC allow radioactive wastes to embark from a foreign country bound for the United States without a clear understanding of its exact type and composition? If so, what were the instances where this occurred?
- (2) Does NRC grant an import license to applicants who cannot provide details regarding the exact origin of the waste or exactly who generated the waste? If so, what were the instances where this occurred?
- (3) Has NRC ever granted an import license with the understanding that some of the wastes will be so dangerous they must be exported back to the country of origin? If so, what were the instances where this occurred?
- (4) Does a State identified by an applicant as a host for the storage or processing of the imported radioactive wastes have any authority to object? Has this ever occurred? If so, what were the circumstances?
- (5) If the importation of radioactive waste is inconsistent with a regional low-level radioactive waste interstate compact, can the regional commission established by the compact object?
- (6) If U.S. Customs and Border Protection determines a sea cargo container laden with

radioactive wastes needs to be inspected, are port security officers trained and prepared to handle the kind of radioactive wastes described in the EnergySolutions applications?

- (7) When the NRC established its criteria for evaluating import licenses, did the Commission anticipate commercial applicants would seek to import large volumes of radioactive wastes for domestic disposal?
- (8) If radioactive waste is imported without a clear understanding of its type and composition, how would NRC ensure that domestic transport of such waste would not be inimical to public health and safety?
- (9) When NRC evaluates an application to import large quantities of radioactive waste, does it consider the existing capacity of domestic low-level waste facilities and the future disposal needs of domestic generators?

In the letter, Barton and Whitfield contend that some of the imported waste may exceed NRC's threshold limits for low-level waste disposal and/or be non-suitable for disposal at the Clive facility since the exact type and composition of the waste cannot be evaluated before embarkation. In support of this contention, they note that the application states, "It is not possible to estimate the quantities, volume, and activity of the materials that will need to be exported."

However, Greg Hopkins, EnergySolutions' Senior Vice President for Communications, was quoted in local press as stating that the waste will be carefully inspected before it leaves the Italian ports to ensure that it falls within the permitted limits. "EnergySolutions will know exactly what the contents of the waste will be before it leaves Italy," said Hopkins, noting that the company applied for the export license in the "extremely unlikely event" that any non-permitted material slips through the screening process so that it can easily be returned to Italy without delays. Hopkins said that is the "NRC's general practice."

In concluding their letter, Barton and Whitfield request responses to the above-identified questions in writing by November 30, 2007.

A complete copy of the letter from Representatives Barton and Whitfield to NRC Chairman Klein can be found at <http://republicans.energycommerce.house.gov/Media/File/News/11-19-07%20NRC.PDF>.

NRC's Responses

According to an official from NRC, the agency is working on a response to the Barton and Whitfield letter, which is expected to be made available to the public in the near future.

Before making a decision on EnergySolutions' license applications, the NRC must publish a notice in the *Federal Register* and allow comments from the public and affected government entities. David McIntyre, an NRC public affairs specialist, was quoted in local press as saying that the agency will begin taking public comments on EnergySolutions applications soon. According to McIntyre, the permit process generally takes six months.

For additional information, please contact Tye Rogers of EnergySolutions at (801) 649-2000 or James Kennedy of NRC at (301) 415-6668.

EnergySolutions Becomes a Public Company ***Donates Stock to Two Utah Charities***

On November 15, 2007, EnergySolutions began trading publicly on the New York Stock Exchange under the ticker symbol ES. In recognition thereof, EnergySolutions' CEO and Chairman of the Board Steve Creamer rang the bell to open trading at the exchange.

"Our commitment to our customers and shareholders is to build the best nuclear services company in the world. Becoming a public company, trading on the New York Stock Exchange, is an important milestone in helping us to fulfill that vision," said Creamer.

In conjunction with the Initial Public Offering, EnergySolutions granted 1,000 shares of stock each to the Guadalupe School and the Road Home Shelter of Salt Lake City. The stock certificates were donated to the Executive Directors of the charitable organizations on the floor of the stock exchange as some of the first trades for EnergySolutions as a new publicly traded company.

"The Guadalupe School and the Road Home are our community neighbors and partners in helping to provide a better quality of life for all Utahans," said Creamer. "We are very proud to be associated with them, and to support their respective missions."

The Guadalupe School provides economically disadvantaged children and non-English speaking adults in Salt Lake City, Utah the education and skills needed to live productive, rewarding lives. The Road Home provides support and shelter for overcoming homelessness and is the largest homeless shelter in Utah. They provide people with basic needs such as food, clothing and shelter with the overall goal to help integrate homeless people back into the community.

For additional information, please contact Mark Walker at (801) 231-9194 or mwalker@energysolutions.com.

Southeast Compact/State of Alabama

Bellefonte COL Application Available

On November 19, the U.S. Nuclear Regulatory Commission made available the public version of a combined license (COL) application for two new reactors at the Bellefonte site near Scottsboro, Alabama. The applicant, the Tennessee Valley Authority (TVA), submitted the application and associated information on October 30. It seeks approval to build and operate two AP1000 reactors at the site, which is located approximately six miles northeast of Scottsboro. The AP1000 is an 1,100 MWe pressurized-water reactor design the NRC certified in 2006.

NRC staff is currently conducting an initial check of the application to determine whether it contains sufficient information required for a formal review. If the application passes the initial check, the NRC will “doCKET,” or accept, it for review. A decision thereon is expected in early 2008. If it is accepted for formal review, the NRC will then notice an opportunity for the public to request an adjudicatory hearing on the application.

The Bellefonte application, minus proprietary or security-related details, is available on the NRC web site at <http://www.nrc.gov/reactors/new-licensing/col.html>.

Southeast Compact/Commonwealth of Virginia

ESP Authorized for North Anna Site

On November 20, the U.S. Nuclear Regulatory Commission authorized its Office of New Reactors to issue an Early Site Permit (ESP) to Dominion Nuclear North Anna, LLC for the North Anna ESP site near Louisa, Virginia. The decision marks the third ESP that has been approved by NRC to date. The first-ever ESP was issued for the Clinton site in Illinois on March 15, 2007. An ESP for the Grand Gulf site in Mississippi was issued on April 5, 2007. NRC continues to work on the ESP application for the Vogtle site in Georgia.

Successful completion of the ESP process resolves many of the site-related safety and environmental issues, and determines the site is suitable for possible future construction and operation of a nuclear power plant. The permit will be valid for up to 20 years. During that time, the company (or any other potential applicant interested in the site) must still seek NRC approval for a Combined License to build one or more nuclear plants on the site before any significant construction can occur.

The company filed its ESP application on September 25, 2003. NRC staff's technical review covered issues such as how the site's characteristics could affect plant safety, environmental protection, and plans for coping with emergencies. The staff published a final safety evaluation for the North Anna ESP in August 2006 and a final environmental impact statement in December 2006. The Atomic Safety and Licensing Board (ASLB) conducted a hearing on the matter and ruled on June 29th of this year that the permit could be issued.

Copies of the North Anna ESP and related documents are available on the NRC's web site at <http://www.nrc.gov/reactors/new-licensing/esp/north-anna.html>.

Southwestern Compact

SW Compact Seeks New Executive Director

The Southwestern Low-Level Radioactive Waste Commission is seeking candidates for the position of Executive Director. The Commission's current Executive Director is Don Womeldorf. The Commission will contract for a new Executive Director effective July 1, 2008.

Interested persons may contact the Commission office at (916) 448-2390 or via e-mail transmission at swllrwcc@swllrwcc.org. Interested parties should contact the Commission no later than January 31, 2008.

American Nuclear Society

ANS Honors Luis Reyes

On November 13, the American Nuclear Society (ANS) honored Luis Reyes, Executive Director of Operations at the U.S. Nuclear Regulatory Commission, with a Presidential Citation. ANS President Donald Hintz presented the award to Reyes at the ANS/European Nuclear Society International Meeting in Washington, DC. The citation acknowledges Reyes' outstanding work and tireless commitment to improve U.S. nuclear energy science and technology policies. In the past 29 years at NRC, Reyes has demonstrated consistent leadership while working on challenges and preparing for the future of the agency.

As the Commission's chief operating officer, Reyes manages the agency's day-to-day operations, overseeing 3,500 employees and an annual budget of over \$800 million. Under his tenure, the NRC has been recognized as the top-ranking agency in the Best Places to Work in the Federal Government and for its commitment to diversity.

"I am honored to receive this recognition from ANS," said Reyes. "I have been fortunate to work with many outstanding colleagues who are dedicated every day to carrying out the agency's mission to protect people and the environment."

ANS presents citations each year to those individuals who have demonstrated outstanding effort for the benefit of the American Nuclear Society and/or the nuclear community.

Board of County Commissioners of the County of Adams v. Colorado Department of Public Health and Environment and Clean Harbors Deer Trail, LLC

Appellate Court Finds in Favor of Clean Harbors

On October 4, 2007, a three-judge panel of the Colorado Court of Appeals issued two orders affirming lower court decisions in lawsuits brought by the Adams County Board of Commissioners (Adams County) against the Colorado Department of Public Health and Environment (CDPHE) and against intervenor Clean Harbors Deer Trail facility (CHDTF). In both actions, the appellate court affirmed the lower court decisions in favor of the defendants.

Background

CHDTF operates a hazardous waste disposal facility in Adams County, Colorado.

Under state statute, when an entity seeks to operate a hazardous waste disposal facility, it must first apply to the local board of county commissioners for a certificate of designation (CD). The county then forwards the application to the CDPHE, which is required to make various findings of fact on site approval. After CDPHE makes its findings and recommends approval of the CD, the county may then hold public hearings on the application and, thereafter, issue the CD.

CHDTF's CD was issued in accordance with these procedures. The CD was initially approved in 1983 and issued to CHDTF's predecessor in 1987. The CD was then transferred and re-issued to CHDTF in 2004.

State law provides that CDPHE is the radiation control agency of the state and gives it authority to issue licenses pertaining to radioactive materials.

When a facility has been issued a hazardous waste CD, state statute authorizes CDPHE to issue a license allowing the disposal of low-level radioactive waste at that facility.

In 2005, CDPHE issued permits pursuant to the federal Resource Conservation and Recovery Act (RCRA) allowing the acceptance and disposal of low-level radioactive waste and polychlorinated biphenyls and pursuant to the state Radiation Control Act authorizing the receipt, possession and disposal of certain low-level radioactive materials at CHDTF. The latter permit was issued pursuant to the CDPHE's permitting authority which provides, in pertinent part, that "CDPHE shall ... [i]ssue permits for treatment, storage, and disposal facilities."

Issues

In February 2006, Adams County filed a complaint seeking judicial review of the permit on the grounds that it was issued without a valid CD and that it improperly resulted in a substantial change in the design and operation of the facility. In a separate action, Adams County also sought judicial review of the grant of the license.

In both cases, CDPHE responded with motions to dismiss, arguing that Adams County lacks judicial standing as a subordinate state agency. CHDTF then moved to intervene, joined the CDPHE's motion, and filed its own motions to dismiss.

The trial court granted the motions and dismissed the claims, concluding that Adams County lacked judicial standing to seek judicial review of the permit and license. Adams County then filed an appeal of the court's decisions.

Rule of Law

In order for a court to have jurisdiction over a dispute, the plaintiff must have standing to bring the case. Colorado's standing requirement includes both constitutional and prudential considerations. The constitutional prong limits the court's inquiry to the resolution of actual controversies, whereas

the prudential prong reflects considerations of judicial self-restraint.

Constitutional Standing In Colorado, the courts apply a two-step test to determine if a plaintiff meets the requirements to have constitutional standing. First, the plaintiff must demonstrate that they have suffered an injury-in-fact. Second, they must show that this harm was committed against a legally protected interest as contemplated by statutory or constitutional provisions.

Prudential Standing According to the court, in the cases at hand, prudential considerations follow “the general rule that counties do not have standing to obtain judicial review of a decision of a superior state agency.” This rule is intended to prevent courts from unnecessarily intruding into matters which are more properly committed to resolution in another branch of government. Where there is a dispute between two executive agencies, says the court, standing does not exist unless “the legislature has exercised its prerogative to grant to the subsidiary agency by ‘an express statutory right’ the ability to sue a superior agency.” Thus, if CDPHE is a superior agency, Adams County may not proceed against the state unless it has express statutory authority to do so.

Arguments and Analysis

The following is a brief analysis of the arguments presented by the plaintiffs and the court’s analysis. Persons interested in more detailed information are directed to the case documents themselves.

Constitutional Standing In regard to the issue of constitutional standing, Adams County asserts in one case that it has a legally protected interest to approve or deny a CD and that the CDPHE’s interference with that interest constitutes an injury-in-fact. Although the court agrees that Adams County has a legally protected right in the CD, and that it has statutory authority to seek review with regard to the CD process, the court notes that Adams County did not seek judicial review of the CD. Instead, it sought review of the permit. And, according to the court, “Adams County does not

possess a similarly protected right in the permit.” Instead, the court found, interest in the permit is statutorily vested solely in the CDPHE.

In addition, the court notes that Colorado statute expressly prohibits CDPHE from delegating interest in the permit. In particular, the statute states “[CDPHE] may ... enter into agreements with local governments to conduct specified activities involving monitoring, inspections, and technical services *but not permit issuance or enforcement.*” (Emphasis added.)

In the other case, Adams County argues that it has a legally protected interest in its zoning and land use authority and that CDPHE circumvented that right by issuing the license. The court agrees that Adams County has a legally protected right to govern the use of land within its boundaries and jurisdiction, but it disagrees that Adams County has a legally protected right in the license and therefore finds that CDPHE’s actions do not constitute injury-in-fact. Again, as in the other case, the court holds that “Interest in the license is statutorily vested solely in CDPHE.”

According to the court’s analysis, once the county issued the CD to Clean Harbors—thereby authorizing a hazardous waste disposal facility to be sited upon its land—CDPHE was then statutorily authorized to issue a license based upon that CD. “At that point,” said the court, “any legally protected right Adams County may have had in the control of the land use was extinguished by virtue of its exercise of its statutory authority in issuing the CD.”

And again, as with the other case, the court noted that Adams County’s complaint did not seek enforcement or administration of its land use authority, but rather only judicial review of the license. Since Adams County does not hold a legally protected interest in the license, and because the complaint seeks judicial review thereof rather than of the county’s authority over land use, the court found that Adams County has not shown any injury-in-fact and does not have constitutional standing.

Prudential Standing In the first case, Adams County attempts to meet the prudential standing requirements by arguing that it has dual authority over the permitting process by virtue of its discretionary authority over the CD procedures. Again, however, the court points out that Adams County's complaint concerns only the permit and that state statute renders Adams County subordinate to CDPHE regarding hazardous waste permits. As for the county's claim that it is equal to CDPHE because the statute requires county approval prior to any change of operations at the facility, the court notes that the referenced statutory provision appears to require the facility, not CDPHE, to seek the county's approval.

Adams County argues nonetheless that, even if subordinate, it has express statutory right to seek judicial review. The court is not persuaded, however, and concludes that "nowhere in the statutes is it evident that the General Assembly has expressly conferred on counties standing to sue CDPHE."

In the other case, the court again disputes Adams County's claim that dual authority exists in the statutes and that it therefore cannot be subordinate to CDPHE. Indeed, the court states that, under its reading of the applicable statutes, the authority vested in CDPHE is "unambiguous." In this regard, the court notes that the legislature has determined that CDPHE shall be the only agency within the state with the authority to regulate radioactive materials and to issue applicable licenses. The county's authority in this context, according to the court, is limited to site or location approval. The court's analysis finds that Adams County's authority is also limited by statutory provisions which provide that "where other procedural or substantive requirements for the planning for or regulation of the use of land are provided by law, such requirements shall control."

As a subordinate agency of the state, Adams County may seek judicial review of CDPHE's action only if the General Assembly so provided by express statutory authorization. However, as with the other case, the court again rejected Adams

County's claim that the legislature has expressly conferred upon counties standing to sue CDPHE.

Conclusions

Based on the above analysis, the court held that since Adams County does not hold a legally protected interest in the permit, it has not shown any injury-in-fact necessary to confer constitutional standing. Moreover, the court concluded that Adams County is a subordinate agency to CDPHE and that there is no explicit authority under any reading of the applicable statutes allowing the county to sue CDPHE.

Accordingly, the appellate court affirmed the trial court's orders dismissing the two actions for lack of standing.

Board of County Commissioners of the County of Adams v. Clean Harbors Deer Trail, LLC

Court Declines to Dismiss Suit Against Clean Harbors
State Health Department Files Motion to Intervene

On October 10, 2007, the District Court of Adams County issued an order dismissing two counterclaims filed by defendant Clean Harbors Deer Trail, LLC (“Clean Harbors”) in response to a lawsuit initiated by plaintiff Board of County Commissioners of the County of Adams (“BOCC”). The court granted the plaintiff’s motion to dismiss the counterclaims after finding that it lacks jurisdiction due to Clean Harbors’ failure to timely exercise its right of judicial review pursuant to Colorado statute. As a result, BOCC’s lawsuit against Clean Harbors remains pending.

Shortly thereafter, on November 15, 2007, the Colorado Department of Public Health and Environment (CDPHE) announced that the Colorado Attorney General’s Office filed a motion on behalf of the department seeking to intervene as a co-defendant in the lawsuit. In October 2007, the Colorado Court of Appeals upheld the dismissal of two lawsuits filed by BOCC against CDPHE finding that the county may not sue the state regarding radioactive materials licenses or hazardous waste permits issued to the Clean Harbors because BOCC is a branch of state government and the state cannot sue itself. (See related story, this issue.)

Background

Clean Harbors operates a hazardous waste disposal facility in eastern Adams County near the former town of Last Chance known as “Deer Trail.” In September 2002, Clean Harbors submitted a Permit Renewal Application to the CDPHE for renewal of the facility’s 1998 State RCRA Permit. The

application was revised in October 2004 to include a proposal to dispose of radioactive materials in excess of the 1998 State RCRA Permit limits.

In connection with the 2004 Permit Renewal Application, Clean Harbors submitted an application to CDPHE for a Radioactive Materials License in January 2005. In April 2005, CDPHE submitted an application for a regional facility to the Rocky Mountain Low-Level Radioactive Waste Board. In June 2005, the compact board designated Deer Trail as a limited regional disposal facility.

In December 2005, CDPHE issued a final Hazardous Waste Permit effective on January 20, 2006 and a Radioactive Materials License effective on December 21, 2005. In December 2006, Clean Harbors began accepting for disposal low-activity radioactive waste meeting limits specified in the permit and license issued by CDPHE.

BOCC’s Lawsuit

On April 25, 2007, BOCC filed suit against Clean Harbors claiming, among other things, that the company has violated applicable laws by operating a regional low-level radioactive waste disposal facility without applying for and obtaining the necessary certificate of designation (CD) from Adams County. The plaintiff asserts that Clean Harbors’ conduct violates various statutes, rules and regulations including the Local Government Land Use Control Enabling Act, the Colorado Hazardous Waste Siting Act, the Solid Wastes Act, the Adams County Development Standards and Regulations, and the Low-Level Radioactive Waste Act. BOCC is seeking civil penalties, injunctive and declaratory relief from the court.

Clean Harbors’ Counterclaims

As part of its response, Clean Harbors filed two counterclaims against BOCC. In the first counterclaim, Clean Harbors alleges that CDPHE has the responsibility to regulate the treatment, storage and disposal of hazardous wastes with exclusive power and authority to issue licenses pertaining to radioactive materials. Clean Harbors

alleges that a 2004 CD issued by BOCC therefore allows the facility to receive the materials described in the license issued by CDPHE or as provided in the CHWA permit and seeks a judicial declaration to that effect. In the second counterclaim, Clean Harbors argues that relevant state statutes indicate an intention to preempt all local authority to determine whether a facility may receive the material described in the license issued by the CDPHE or the CHWA permit and seeks a judicial declaration that BOCC's actions are preempted by state law and that Clean Harbors is legally entitled to receive the materials permitted under the license and CHWA permit.

District Court's Order

The district court dismissed the counterclaims after finding that it lacks jurisdiction to consider them due to Clean Harbors' failure to timely exercise its right of judicial review under Colorado statute. The court found that Colorado statute required Clean Harbors to seek judicial review of the 2004 CD within 30 days of its issuance. The court was not persuaded by Clean Harbors' argument that the statute is not the sole remedy for actions taken by BOCC with regard to the CD. The court also rejected Clean Harbors' argument that the BOCC's interpretation of the CD is "new," noting that then-counsel for the company assailed conditions contained in the CD that are now at issue. And, while not reaching the merits of this argument due to subject matter concerns, the court questioned Clean Harbors' allegation that both express and inferred preemption exists regarding the dominant state interest in regulating hazardous waste disposal.

CDPHE's Motion to Intervene

According to a press release issued by CDPHE, the department is seeking to intervene as a co-defendant in the lawsuit because BOCC's complaint "indirectly attacks" the radioactive materials license and hazardous waste permit that it issued to the Deer Trail facility. "We have a duty to make sure the laws and statutes of the state are applied equally around the state," commented Gary Baughman, Director of the Department's Hazardous Materials

and Waste Management Division. "Sometimes that means making an effort to ensure that different courts make consistent decisions. That's why we intervened in this case." Among other things, CDPHE is challenging BOCC's assertion that the designation of a low-level radioactive waste disposal facility by the Rocky Mountain Compact requires a separate CD from the county. According to CDPHE, state statutes provide that the existing CD fulfills the requirement.

For additional information, please contact Phil Retallick of Clean Harbors at (803) 691-3427 or Gary Baughman of CDPHE at (303) 692-3338.

*Convention on Nuclear Safety***Fourth Report Issued for International Convention**

In early October, the U.S. Nuclear Regulatory Commission announced that it has issued its "Fourth National Report for the Convention on Nuclear Safety." The updated report demonstrates how the U.S. government achieves and maintains a high level of nuclear safety worldwide by enhancing national measures and international cooperation, and by meeting the obligations of all the articles established by the Convention.

Among other things, the report addresses the issues identified in the peer-review of the third review meeting, discusses challenges and issues that have arisen since the third review meeting, discusses managing human capital, a major NRC focus area, and also discusses the NRC's preparations for licensing new reactors. In addition, for the first time, the Institute of Nuclear Power Operations has provided input to the report explaining how the nuclear industry maintains and improves nuclear safety.

Parties to the convention will peer review the 2007 report, which updates a 2004 report. Every three years the countries participating in the convention must submit reports on their programs for peer review as an incentive to achieve the highest possible levels of safety. The Fourth National Report Review Meeting will be held in Vienna, Austria in April of 2008.

The Fourth National Report for the Convention on Nuclear Safety can be found on the NRC's Agencywide Documents Access and Management System (ADAMS) at <http://www.nrc.gov/reading-rm/adams/web-based.html> using accession number ML07260091.

*International Atomic Energy Agency***NRC Official Becomes IAEA Advisor**

The U.S. Nuclear Regulatory Commission's Regional Administrator for Region II in Atlanta, William D. Travers, has been selected to serve at the International Atomic Energy Agency's (IAEA) headquarters in Vienna as the Senior Technical Advisor to the agency's Deputy Director General, Tomihiro Taniguchi, in the areas of safety and security policy as well as a variety of technical issues. In this capacity, he will provide valuable regulatory expertise to assist in the IAEA's nuclear safety and security mission. In particular, he will advise on the planning and implementation of the Integrated Regulatory Review Service (IRRS) program, provide guidance to countries starting or expanding nuclear power programs, and work to advance a strong safety/security interface in IAEA activities. The position is part of the IAEA's cost-free expert program, which enables high-qualified personnel to serve in temporary appointments for the mutual benefit of the IAEA and its member states.

Travers joined NRC in 1976 as a radiological physicist and has held positions of increasing responsibility in a variety of offices, including Chief of the Emergency Preparedness Branch, Deputy Associate Director for Advanced Reactors and License Renewal, and Director of the Special Projects Office in the Office of Nuclear Reactor Regulation; Director of the Spent Fuel Project Office in the Office of Nuclear Material Safety and Safeguards; and Deputy Executive Director for Regulatory Effectiveness in the Office of the Director of Operations. He received a bachelor's degree from Purdue University in 1972 and a doctorate from Purdue in 1976. In 2005, he was awarded the rank of Distinguished Executive by President George W. Bush.

Travers began his assignment in Vienna starting in November. At that time, Victor McCree, Region II's Deputy Regional Administrator for Operations, began serving as Acting Regional Administrator.

Advisory Committee on Nuclear Waste & Materials (ACNWM)

ACNWM Holds End of the Year Meetings

The U.S. Nuclear Regulatory Commission's Advisory Committee on Nuclear Waste & Materials (ACNWM) met at the agency's headquarters in Rockville, Maryland on December 17 – 19. During the course of the meeting, the committee received reports on the status of operations at the Barnwell low-level radioactive waste disposal facility and on the NRC's 2006 commercial low-level radioactive waste strategic planning initiative. In addition, the committee was briefed on the following items: the Electric Power Research Institute's report on drift degradation at Yucca Mountain, NRC's rulemaking on groundwater protection at in-situ leach uranium mining facilities, vendor's views on the transportation-aging-disposal performance specifications, planned waste management activities at the U.S. Department of Energy mixed-oxide fuel fabrication facility, and actions by the titanium task force to revise the significance determination process to address spills and leaks.

The committee also met on November 13 – 15 to discuss, among other items, a briefing to the Commission about the committee's recent and planned activities, and the issue of post-emplacement drift degradation for the proposed high-level radioactive waste geologic repository at Yucca Mountain, Nevada. During the course of that meeting, committee members were briefed by U.S. Department of Energy officials on the final design (surface and subsurface facilities) proposed for the forthcoming Yucca Mountain geologic repository license application.

The ACNWM reports to and advises the Commission on all aspects of nuclear waste and materials management. ACNWM meetings are

open to the public; however, portions may be closed to protect information that is pre-decisional.

Copies of ACNWM meeting agendas are available on the NRC's web site at <http://www.nrc.gov/reading-rm/doc-collections/acnw/agenda/2007>.

Advisory Committee on Reactor Safeguards (ACRS)

ACRS Holds End of the Year Meeting

The U.S. Nuclear Regulatory Commission's Advisory Committee on Reactor Safeguards (ACRS) met at the agency's headquarters in Rockville, Maryland on November 1 – 3 to discuss, among other things, topics of interest to NRC Commissioner Peter B. Lyons. In addition, the committee was briefed on NRC staff's implementation of the lessons learned from the review of Early Site Permit (ESP) applications for nuclear power plants, the Vogtle ESP application, ESBWR reactor design certification safety evaluation, and an extended power uprate application for the Susquehanna nuclear power plant.

The ACRS advises the Commission on licensing and operation of nuclear power plants and related safety issues. ACRS meetings are open to the public; however, portions may be closed to protect information that is proprietary.

Copies of ACRS meeting agendas are available on the NRC's web site at <http://www.nrc.gov/reading-rm/doc-collections/acrs/agenda/2007>.

Two New Members Named to ACRS

In mid-November, the U.S. Nuclear Regulatory Commission announced the appointment of John Stetkar and Dennis Bley to the agency's Advisory Committee on Reactor Safeguards (ACRS). The committee—which advises the Commission on licensing and operation of nuclear power plants and related safety issues—has 10 other members.

Stetkar has more than 27 years of experience as an engineering consultant. He is a principal of Stetkar & Associates and is an internationally recognized expert in the fields of risk assessment and reliability analysis. He serves as a technical expert for the International Atomic Energy Agency. Prior to his career as a consultant, Stetkar was a licensed senior reactor operator at the Zion nuclear station. He holds a bachelor's degree in electrical engineering and a master's degree in nuclear and environmental engineering from the Massachusetts Institute of Technology.

Bley has more than 30 years of experience in nuclear and electrical engineering, reliability and availability analysis. He is the president of Buttonwood Consulting, Inc. and a principal of The WrethWood Group. He has served on a number of technical review panels for NRC and U.S. Department of Energy programs and is a frequent lecturer in short courses for universities, industry, and government agencies. Bley holds a bachelor's degree in electrical reactor engineering from the University of Cincinnati and a doctorate in nuclear reactor engineering from the Massachusetts Institute of Technology.

U.S. Department of Energy

Hearing re Nevada's Challenge to Yucca Mountain Documents Certification

On December 5, the U.S. Nuclear Regulatory Commission's Pre-License Application Presiding Officer (PAPO) Board heard oral arguments in Las Vegas on Nevada's challenge to the U.S. Department of Energy's certification of its document collection on the Licensing Support Network (LSN) for the Yucca Mountain proceeding.

DOE's certification, which was filed on October 19, 2007, represented a milestone in the department's preparations to file a license application for the proposed high-level waste geologic repository at Yucca Mountain, Nevada—approximately 100 miles northwest of Las Vegas. The certification is DOE's declaration that it has made available electronically all documents required by NRC regulations generated by DOE or its contractors relating to the license application, for use by potential parties to an adjudicatory hearing. NRC regulations require DOE to certify its document collection at least six months prior to submittal of a license application.

Three judges from NRC's Atomic Safety and Licensing Board (ASLB) Panel comprise the PAPO Board. The board was appointed to hear and rule on LSN-related matters before the application is submitted.

The December 5 hearing was open to members of the public. In addition, Cox Communications, Las Vegas provided at no cost a live feed of the proceeding via satellite to the NRC and broadcast media in southern Nevada and nationwide as a public service, as well as live on its local access channel, Cox 96. The proceeding was also available for public viewing at the ASLB hearing room in NRC headquarters in Rockville, Maryland.

(Continued from page 1)

- ◆ a desire on the part of industry for greater flexibility and reliability in LLW disposal options;
- ◆ a potential for increased storage of Class B and C LLW due to the scheduled closing of the Barnwell facility to out-of-region waste after June 30, 2008;
- ◆ an anticipated need for the disposal of large quantities of power plant decommissioning waste, as well as depleted uranium from enrichment facilities;
- ◆ increased security concerns; and,
- ◆ the potential generation of new waste streams (such as by the next generation of nuclear reactors and the anticipated reemergence of nuclear fuel reprocessing).

Such issues have prompted interest by various national organizations regarding the current status of regulation and disposal of LLW including the American Nuclear Society, the Health Physics Society, the Advisory Committee on Nuclear Waste & Materials (ACNWM), the Government Accountability Office, the National Academy of Sciences, the Nuclear Energy Institute (NEI), the Electric Power Research Institute and the Sierra Club. Many of these entities have adopted position papers and recommended specific actions to be taken by NRC.

In addition, NRC is facing internal factors—such as a serious challenge to the agency's knowledge base in the LLW area posed by the approaching retirement of much of the senior staff—which will require attention.

Accordingly, NRC staff performed the LLW strategic assessment in order to formulate a structured process by which the agency will apply available resources to these and other LLW issues “effectively and efficiently and in a manner consistent with its regulatory responsibilities.” The goal of the strategic assessment, as described by

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staff, is the identification and prioritization of staff activities that should continue to (1) ensure safe and secure LLW disposal; (2) improve the effectiveness, efficiency, and adaptability of the NRC's LLW regulatory program; and, (3) ensure regulatory stability and predictability, while allowing flexibility in disposal options.

Methodology

Four major steps were used to perform the strategic assessment: (1) development of strategic objectives and goals; (2) information gathering; (3) evaluation of the information obtained; and, (4) decisionmaking.

NRC staff defined the strategic objective for the LLW program to be consistent with, and to complement, the overall agency goals. Specifically, the strategic objective is "to provide for a stable, reliable, and adaptable regulatory framework for effective LLW management, while maintaining safety, security and protection of the environment."

A variety of means were used to elicit stakeholder input including issuance of a *Federal Register* notice, participation in an ACNWM workshop, solicitation of opinions and suggestions from Agreement State regulators and representatives of industry groups, and consideration of concerns and opinions expressed in recent position papers issued by national scientific and technical organizations.

After considering stakeholder input along with its own experience, staff developed a list of 20 proposed activities that supported the strategic objective and were responsive to identified programmatic needs. Each activity was then evaluated and assigned a priority of high, medium or low. After considering potential activities that could be undertaken to improve the LLW regulatory framework, NRC staff agrees with a recent finding by the ACNWM that "the current regulations are fully protective of the public health and safety and worker health and safety." Nonetheless, staff notes "there are a number of opportunities for better risk-informing the LLW

regulatory framework and improving the effectiveness of LLW management and regulation." Of the 20 activities evaluated by staff, seven were assigned a high priority and were evaluated in greater detail to determine how budgeted resources in FY 2008 and FY 2009 should be applied. The staff then established tentative schedules for the next two fiscal years assuming the expertise of current staff. Unscheduled tasks will be revisited as part of the budget process in the out-years to assess whether current priorities should be reassessed.

Findings

The following is a brief overview of the results of the strategic assessment. Persons interested in more detailed information are directed to the assessment itself.

High Priority Tasks The following seven tasks were assigned a high priority by NRC staff [with scheduling information identified in brackets]:

- (1) review and update guidance on extended storage of LLW for materials and fuel cycle licensees [complete 2nd quarter of FY 08] and review industry guidance for reactors [complete 4th quarter of FY 08];
- (2) develop and implement guidance on 10 CFR 20.2002 alternative disposal requests [initiated 3rd quarter of FY 07 and projected to complete 4th quarter of FY 08];
- (3) determine if disposal of large quantities of depleted uranium from enrichment plants warrant change in uranium waste classification [initiated 3rd quarter of FY 07 and projected to complete 4th quarter of FY 08];
- (4) update Branch Technical Position on concentration averaging and encapsulation [begin 2nd quarter of FY 08];
- (5) develop procedures for import/export reviews [initiate in FY 09];

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- (6) develop guidance document on alternate waste classification (10 CFR 61.58) [revisit in FY 09]; and,
- (7) perform scoping study on byproduct material financial assurance [revisit in FY09].

All of the listed tasks are projected to require 1 to 2 FTE in resources with the exception of items 6 (which is projected to require 3.6 to 4.3 FTE) and 7 (which is projected to require 0.2 to 0.4 FTE). NRC's LLW program is currently budgeted to have 5.0 FTE in FY 2008 and 7.0 FTE in FY 2009. In both years, 3.5 FTE per year is allocated to baseline activities.

NRC staff note that NEI has recently indicated that it plans to submit reports for NRC review addressing some of the above-identified activities including, in the near-term, an industry report on extended storage guidance for nuclear power plants. Staff plans to continue meeting with NEI and to review the reports stating "NRC review and endorsement of industry reports on these issues will leverage industry's efforts, will save staff resources, and will enable the staff to address a broader set of LLW issues with the current resources."

Medium and Low Priority Items The following thirteen items were assigned a medium or low priority by NRC staff [with individual priority levels identified in brackets]:

- ◆ evaluate potential changes to LLW regulatory program as a result of severe curtailment of disposal capacity [low];
- ◆ promulgate rule for disposal of low-activity waste [low];
- ◆ develop licensing criteria for Greater-Than-Class C disposal facility [medium];
- ◆ identify and evaluate potential legislative changes [low];
- ◆ consolidate LLW guidance [medium];

- ◆ implement major revisions to 10 CFR Part 61 [low];
- ◆ coordinate with other agencies on consistency in regulating LAW disposal [medium];
- ◆ develop guidance that summarizes disposition options for low-end materials and waste [medium];
- ◆ identify new waste streams [medium];
- ◆ develop waste acceptance criteria for LLW disposal in uranium mill tailings impoundments [low];
- ◆ develop information notice on waste minimization [medium];
- ◆ examine need for guidance on defining when radioactive material becomes LLW [low]; and,
- ◆ develop and implement national waste tracking system [low].

While NRC staff recognizes that the implementation of many of the above-identified items could provide benefits, they are ranked as having medium or low priority due to a variety of factors including the low chances for success or being outside of NRC's purview. For instance, in the discussion of ranking the examination of the desirability and benefits of legislative changes (including the proposed use of DOE facilities for commercial waste), NRC staff note that "the difficulty and low likelihood of effecting legislative change offset the potential benefits."

According to the strategic assessment, NRC does not plan work on items ranked as having medium or low priority at this time. NRC staff will, however, periodically review the rankings in the future to see if changes are warranted.

Additional Information NRC's strategic assessment contains five appendices that provide detailed supplemental information as follows:

- ◆ Appendix A contains examples of stakeholder opinions and recommendations used by the staff to inform the assessment;
- ◆ Appendix B describes assumptions used by the staff to forecast how LLW disposal scenarios may change over time and thereby affect industry and regulatory needs;
- ◆ Appendix C provides a comprehensive summary showing the relationship of each proposed activity to its potential impact on strategic goals, the relative need for the task, the estimated level of effort required, anticipated benefits, potential unintended consequences, and ranking of each task as low, medium or high priority;
- ◆ Appendix D presents a tabulated correlation of the staff's proposed activities with recommendations provided by the Government Accountability Office in a number of publications, by the Advisory Committee for Nuclear Waste & Materials in a recent white paper, and in a recent report produced by the National Academy of Sciences; and,
- ◆ Appendix E discusses knowledge transfer issues that have an impact on the agency's LLW regulatory program.

For additional information, please contact James Kennedy of NRC's Low-Level Waste Branch at 301-415-6668 or jek1@nrc.gov. A copy of the strategic assessment, and supporting documentation, will be available on NRC's web site at <http://www.nrc.gov/reading-rm/doc-collections/commission/secys/2007> or by calling the NRC Office of Public Affairs at (301) 415-8200.

OMB Audits NRC's Decommissioning and LLW Program

Program Receives Highest Possible Rating

The Office of Management and Budget (OMB) recently completed an audit of the U.S. Nuclear Regulatory Commission's decommissioning and low-level radioactive waste program. The detailed evaluation—on which the program received the highest possible rating—has information on independent reviews, performance results, the types of things done, and so forth.

Overview

NRC's decommissioning and low-level radioactive waste program aims to ensure that licensees manage sites to protect public health, safety and the environment and to promote common defense and security. The program includes sites being decommissioned, sites that are currently (or previously) processing uranium ore, low-level radioactive waste disposal facilities and certain Department of Energy facilities.

Rating

OMB's audit found the following:

- ◆ *The program purpose and design are clear and sound:* NRC's program—which is not redundant or duplicative of any other federal, state, local or private effort—serves as the independent regulator to ensure safe management and cleanup of various NRC licensed sites. NRC is given sole responsibility via various statutes at civilian nuclear facilities, uranium recovery sites, low-level radioactive waste sites, and certain DOE facilities.
- ◆ *Regular independent assessments have helped the program to become more results-focused.* Problems that have delayed licensee decommissioning or

resulted in higher than necessary costs to licensees decommissioning sites have been resolved through these evaluations. Low-level radioactive waste management and regulation have become more risk-informed and effective through assessments.

- ◆ *The program achieves its long-term safety and security goals with respect to safe management and cleanup of an increasing number of NRC-licensed sites that use radioactive material.* Although current regulations are fully protective of public health and safety and worker health and safety, the program should improve the linkage between annual measures and long-term outcomes.

Improvement Plan

The OMB audit recommended the following two areas of improvement:

- ◆ development of better linkage of budget requests to the programs success in accomplishing annual and agency long-term goals to make clear how funding affects program accomplishment, and
- ◆ improvement of quantitative measurements of efficiency, including baselines and annual targets to better demonstrate year-to-year performance trends.

Additional information on OMB's audit of NRC's decommissioning and low-level radioactive waste program can be found at <http://www.whitehouse.gov/omb/expectmore/summary/10009039.2007.html>.

License Renewals Continue to Move Forward

The U.S. Nuclear Regulatory Commission continues to process license renewal applications from various nuclear power plant operators. In that regard, the agency recently

- ◆ announced the opportunity to request a hearing and conducted two public meetings to discuss the review process for the license renewal application for the Beaver Valley nuclear power plant, Units 1 and 2, and
- ◆ established a three-judge board to review requests for a hearing on the license renewal application for the Indian Point nuclear power plant.

Beaver Valley Nuclear Plant

On October 26, NRC announced the opportunity to request a hearing on an application for a 20-year renewal of the operating licenses for the Beaver Valley nuclear power plant, Units 1 and 2. Then, on November 27, NRC staff conducted two public meetings to discuss the agency's review process for the application. The sessions provided members of the public with an opportunity to comment on environmental issues that they believe the NRC should consider during review of the application.

Beaver Valley Units 1 and 2 are pressurized water reactors located about 17 miles west of McCandless, Pennsylvania. The current operating licenses expire on January 29, 2016 for Unit 1 and May 27, 2027 for Unit 2.

Beaver Valley's operator, First Energy Nuclear Operating Company (FENOC), submitted the license renewal application on August 27. NRC staff has determined that the application contains sufficient information required for the formal safety and environmental reviews. License renewal reviews typically take 22 months with no hearing, or 30 months with a hearing.

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A notice of opportunity to request a hearing was published on October 26 in the *Federal Register*. The deadline for requesting a hearing is 60 days thereafter. Petitions may be filed by anyone whose interest may be affected by the license renewal and who wishes to participate as a party in the proceeding. NRC staff provided background information regarding the hearing process to members of the public during a public information session conducted on October 25 near Beaver Valley.

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

Indian Point Nuclear Plant

A three-judge board has been established to review requests for a hearing on the license renewal application for the Indian Point nuclear power plant. The board, which will conduct the hearing should one take place, is drawn from the Atomic Safety and Licensing Board (ASLB) Panel, which is a judicial component of NRC tasked with conducting all licensing and other hearings. The ASLB operates independently of NRC technical staff.

Indian Point's operator, Entergy Nuclear Operations, submitted a license renewal application on April 30, 2007. The application seeks a 20-year renewal of the operating license for Units 2 and 3. Both units are pressurized water reactors located in Buchanan, New York—approximately 24 miles north of New York City. The current operating licenses expire on September 28, 2013, for Unit 2 and on December 12, 2015, for Unit 3. Unit 1 was shut down in 1974.

As part of its review of the application, NRC staff will prepare a draft environmental impact statement (EIS). The comments provided at public meetings that were held on September 19 will be considered as that report is being developed. Once a draft version of the report is completed, NRC staff will once again meet with the public to solicit comments

on that document. Following consideration of those comments, a final EIS will be prepared.

A copy of the Indian Point nuclear power plant renewal application, as well as the environmental report submitted by Entergy Nuclear Operations, is available at <http://www.nrc.gov/reactors/operating/licensing/renewal/applications.indian-point.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>.

NRC Holds Plant Security and Preparedness Meeting

On November 8, the U.S. Nuclear Regulatory Commission held a public meeting on nuclear security at U.S. nuclear power plants. The following day, the agency held a public meeting on security-based emergency preparedness drills. During the course of the meetings, the public was invited to ask questions and to participate in discussions.

The November 8th meeting focused on issues related to the security of both nuclear facilities and radiological materials, including topics such as security policy, force-on-force exercises and threat assessment. The November 9th meeting focused on the status of and lessons learned from security-threat based emergency preparedness drills as well as proposed changes to the Federal Emergency Management Agency's Radiological Emergency Preparedness Program Manual.

Meeting notices and complete agendas for both meetings can be found at <http://www.nrc.gov/public-involve/public-meetings/index.cfm>. Questions about the meetings should be directed to Sheldon Stuchell at (301) 415-1847 or sxs10@nrc.gov.

NRC Discusses Enhancing Environmental Review Process

On December 6, U.S. Nuclear Regulatory Commission staff met with the public at the agency's headquarters in Rockville, Maryland to discuss how the agency can enhance the efficiency and effectiveness of its environmental review process. The staff was instructed to hold this meeting by the Commission as part of the agency's effort to improve its review of Combined License (COL) applications.

The meeting included a public comment session and a roundtable discussion among NRC staff and invited state and federal agencies, public interest groups and industry groups. The full meeting agenda can be found on NRC's electronic document database, ADAMS, by entering ML073060575 at <http://adamswebsearch.nrc.gov/dologin.htm>.

For additional information, please contact Irene Yu at (800) 368-5642, ext. 1951.

Comment Sought on Reactor Oversight Process

The U.S. Nuclear Regulatory Commission accepted comments from members of the public on the implementation of the Reactor Oversight Process (ROP) through December 7, 2007. The agency put the ROP in place seven years ago in an effort to revamp and improve its inspection programs for commercial nuclear power plants. NRC seeks feedback each year in order to assist the agency in continuing to improve its regulatory approach.

In particular, NRC requested the public's answers to a list of 26 questions relating to the ROP, including the following:

- ◆ Does the inspection program adequately cover areas important to safety?
- ◆ Is the information in NRC inspection reports useful to you?
- ◆ Is the ROP understandable, and are the processes, procedures and products clear and written in plain English?
- ◆ Has the public had sufficient opportunity to participate in the ROP and provide input and comments?

All 26 questions were contained in a Federal Register notice. That notice is available on the NRC's web site at <http://www.nrc.gov/NRR/OVERSIGHT/ASSESS/rop2007survey.pdf>.

NRC Issues FY 2007 Performance and Accountability Report

In mid-November 2007, the U.S. Nuclear Regulatory Commission announced that the agency has issued its Performance and Accountability Report for FY 2007. According to NRC, the report shows that the agency has again achieved its safety and security performance goals over the past 12 months and continues to position its resources and organization to maintain strong oversight of existing nuclear facilities and to review applications for new nuclear power reactors, license renewals for existing facilities, and a potential license application for the proposed high-level waste repository at Yucca Mountain, Nevada.

"This report clearly demonstrates that the NRC's financial and performance data are reliable and complete and that the agency has prudently managed the funds entrusted to it by the American public," said Chairman Dale Klein.

The report notes that NRC has implemented a number of internal control improvements, eliminated a long-standing material weakness relating to the fee-billing process, and evaluated its internal controls, including those relating to financial reporting and the agency's financial management systems as required by the Federal Managers Financial Integrity Act. In addition, the report concludes that there is reasonable assurance that the NRC is in compliance with the Act and has developed a corrective action plan to eliminate a material weakness associated with information technology security. The agency is also in the process of integrating and modernizing its financial systems to enhance controls, reporting and decision-making.

In announcing the report, NRC stated that the agency "continues its high-quality service to the public to enable the use and management of radioactive materials and nuclear fuel for beneficial

civilian purposes in a manner that protects public health and safety and the environment, and promotes the security of the Nation.”

NRC's FY 2007 Performance and Accountability Report is available in the lower-left hand corner of the agency's web site at <http://www.nrc.gov>.

NRC Extends Fines re Employee Protection Regulations

In mid-November, the U.S. Nuclear Regulatory Commission announced that it is amending its employee protection regulations to clarify its authority to impose a fine on contractors and subcontractors if they violate the agency's regulations by discriminating against their employees for engaging in “protected activities.” Among other things, the amendments allow the NRC to impose a fine on the United States Enrichment Corporation (USEC), as well as on any of USEC's contractors or subcontractors, if it discriminates against an employee for engaging in protected activities at its gaseous diffusion plants in Kentucky and Ohio. These plants are certified by the NRC rather than licensed.

Under current regulations, discrimination is prohibited by those holding an NRC license for use of nuclear material, an applicant for a Commission license, a holder or applicant for a certificate of compliance, or a contractor or subcontractor of these entities. Enforcement actions specified for violations of these requirements are denial, revocation or suspension of the license; imposition of a fine on the licensee or applicant; or other enforcement action. While these regulations prohibit discrimination by a contractor or subcontractor, they do not explicitly provide for imposition of a fine on a contractor or subcontractor.

“Protected activities” include providing information to the Commission or the employer about alleged violations of the Atomic Energy Act or the Energy Reorganization Act, refusing to engage in any practices made unlawful by these Acts if the employee has identified the alleged illegality to the employer, requesting the Commission to take action against the employer, and testifying before Congress or any federal or state proceeding on these subjects.

The Commission emphasized that the amendments do not represent a change in its long-held view that licensees are responsible for maintaining control and oversight of contractor and subcontractor activities. There may be instances in which the Commission may wish to issue fines to both the responsible contractor or subcontractor and the licensee, such as in situations in which the licensee is aware of discrimination by its contractor or subcontractor and does not take immediate action to remedy the situation. Further, the Commission certified that this rule will not have a negative economic impact on a substantial number of small entities.

The amendments were published as a proposed rule for public comment on January 31, 2006. NRC received three comments, all of which are addressed in the final rule. The final rule was approved by the Commission on October 24 and published in the *Federal Register* shortly thereafter. The amendments became effective 30 days after publication.

NRC Issues Information Digest

In late October, the U.S. Nuclear Regulatory Commission announced that it has issued its 2007-08 edition of the *Information Digest*. The document (NUREG-1350, Volume 19) is intended to present up-to-date information about the agency, domestic and worldwide nuclear energy, nuclear materials safety, and radioactive waste in an easy-to-read format. This edition provides an expanded discussion about future U.S. commercial nuclear power licensing and features enhanced graphics and illustrations as well as an updated design.

The *Information Digest*, which is published annually, provides a compilation of NRC-related and nuclear-related data and is intended to serve as a quick reference to major facts about the agency and the industry it regulates.

Copies of the Information Digest can be obtained electronically at <http://www.nrc.gov> in the lower left-hand corner of the agency's homepage. A single copy is available free from NRC by sending requests to DISTRIBUTION@nrc.gov or a facsimile to (301) 415-2289.

FY2007 Small Business Contracting Accomplishments

The U.S. Nuclear Regulatory Commission reported significant improvements in its FY 2007 Small Business accomplishments over last year's contracting activities. The agency exceeded its annual goals in four of five targeted categories for small business procurement.

NRC's Office of Small Business and Civil Rights oversees this program, supported by headquarters and regional offices. "Diversity and equality can only be achieved by full participation of everyone in the small business community," said Luis Reyes, Executive Director for Operations. The Small Business Program is an advocacy program for all categories of small businesses. Through this program, the NRC seeks to identify qualified firms from among these businesses, provide them appropriate business opportunity information, and advocate their participation in obtaining NRC business.

In FY 2007, NRC awarded approximately \$139 million. Of this total, small business awards were as follows: small businesses (\$61.9 million); small disadvantaged businesses (\$19.6 million); women-owned small businesses (\$12.9 million); and HUBZone small businesses (\$6 million). The only goal that the NRC did not reach was for service-disabled-veteran-owned small businesses (\$2.3 million). However, the agency did increase its efforts significantly in making contracting opportunities available to this group.

An agency analysis illustrates that NRC has contributed significantly to the growth of at least 13 firms from small businesses to large businesses over the past three years and these firms continue to provide valuable services to the agency.

For more information, please contact Mauricio Vera, Small Business Program Manager, at (301) 415-7160 or mxv@nrc.gov.

Obtaining Publications

To Obtain Federal Government Information

by telephone

- DOE Public Affairs/Press Office (202) 586-5806
- DOE Distribution Center (202) 586-9642
- DOE's National Low-Level Waste Management Program Document Center (208) 526-6927
- EPA Information Resources Center (202) 260-5922
- GAO Document Room (202) 512-6000
- Government Printing Office (to order entire *Federal Register* notices) (202) 512-1800
- NRC Public Document Room (202) 634-3273
- Legislative Resource Center (to order U.S. House of Representatives documents) (202) 226-5200
- U.S. Senate Document Room (202) 224-7860

by internet

- NRC Reference Library (NRC regulations, technical reports, information digests, and regulatory guides).....www.nrc.gov
- EPA Listserve Network • Contact Lockheed Martin EPA Technical Support at (800) 334-2405 or e-mail (leave subject blank and type help in body of message).....listserv@unixmail.rtpnc.epa.gov
- EPA • (for program information, publications, laws and regulations) www.epa.gov
- U.S. Government Printing Office (GPO) (for the Congressional Record, *Federal Register*, congressional bills and other documents, and access to more than 70 government databases)..... www.access.gpo.gov
- GAO homepage (access to reports and testimony) www.gao.gov

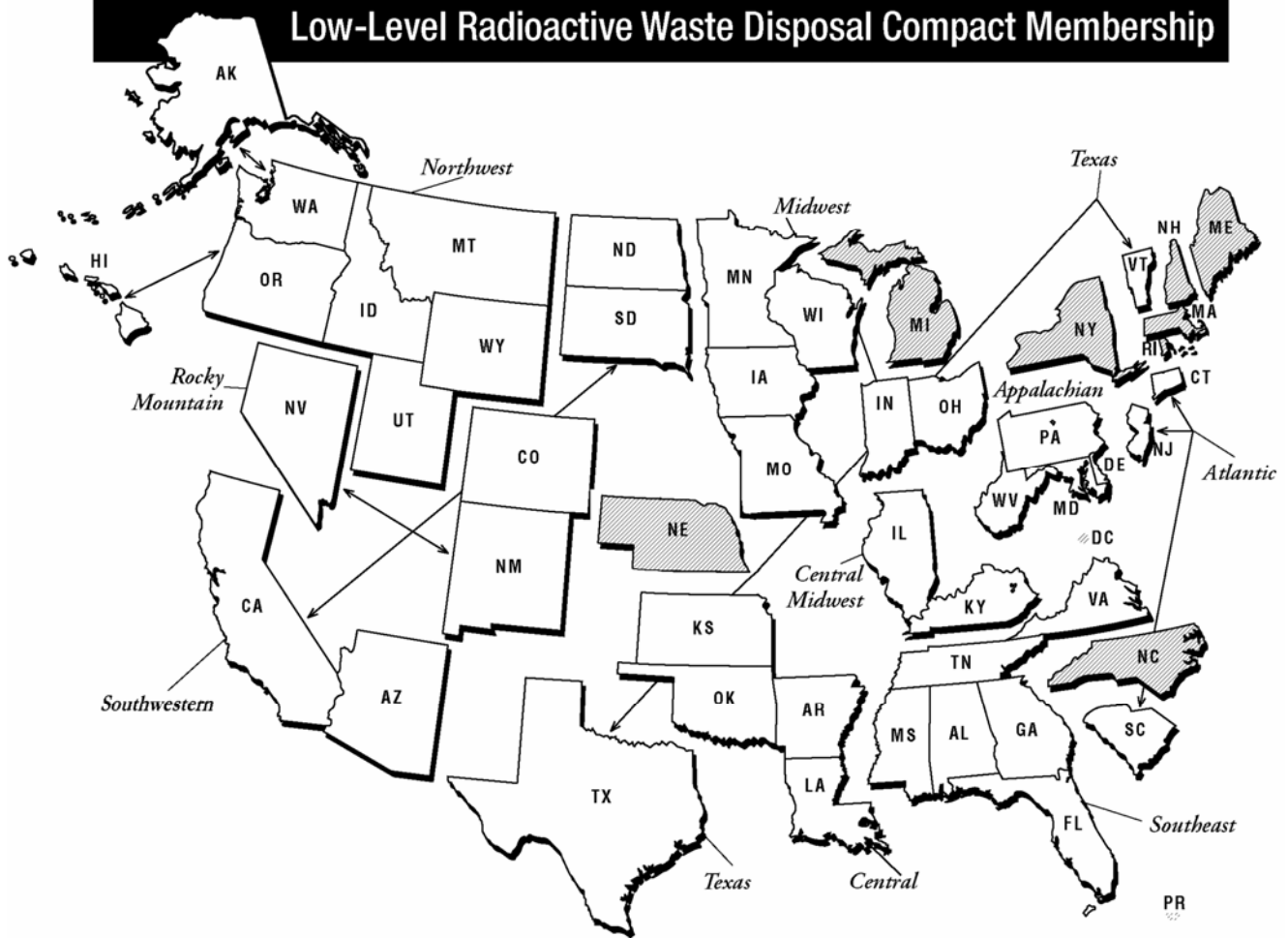
To access a variety of documents through numerous links, visit the web site for the LLW Forum, Inc. at www.llwforum.org

Accessing LLW Forum, Inc. Documents on the Web

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

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

Low-Level Radioactive Waste Disposal Compact Membership



Appalachian Compact

Delaware
Maryland
Pennsylvania
West Virginia

Atlantic Compact

Connecticut
New Jersey
South Carolina

Central Compact

Arkansas
Kansas
Louisiana
Oklahoma

Central Midwest Compact

Illinois
Kentucky

Northwest Compact

Alaska
Hawaii
Idaho
Montana
Oregon
Utah
Washington
Wyoming

Midwest Compact

Indiana
Iowa
Minnesota
Missouri
Ohio
Wisconsin

Rocky Mountain Compact

Colorado
Nevada
New Mexico

Northwest accepts Rocky Mountain waste as agreed between compacts

Southeast Compact

Alabama
Florida
Georgia
Mississippi
Tennessee
Virginia

Southwestern Compact

Arizona
California
North Dakota
South Dakota

Texas Compact

Texas
Vermont

Unaffiliated States

District of Columbia
Maine
Massachusetts
Michigan
Nebraska
New Hampshire
New York
North Carolina
Puerto Rico
Rhode Island