

LLW *notes*

Volume 22, Number 5 September/October 2007

Texas Compact/State of Texas

TCEQ Completes Technical Review of WCS' By-Product Material Disposal Application and Prepares Draft License

On October 22, 2007, the Texas Commission on Environmental Quality (TCEQ) announced that its Executive Director has completed the technical review of Waste Control Specialists LLC (WCS) application for a radioactive material license for the commercial disposal of by-product material and prepared the supporting documentation, including a draft license. The draft license, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that the license, if issued, meets all statutory and regulatory requirements.

Background

By-product material includes uranium and thorium mill tailings as well as equipment, pipe and other materials used to handle and process the mill tailings. WCS' application proposes to locate a by-product disposal facility approximately 31 miles west of the city of Andrews in Andrews County, Texas, and six miles east of the City of Eunice, New Mexico. The proposed facility is located just east of the Texas—New Mexico boundary and one mile north of Texas State Highway 176.

Review of the WCS application was initiated by the Texas Department of Health in June 2004 pursuant to Title 25 of the Texas Administrative Code

(TAC), Section 289.260. On September 1, 2004, the Department was reorganized into the Texas Department of State Health Services (DSHS). In the newly formed DSHS, the Technical Assessments Group continued with the review until the 80th Texas Legislature passed, and the Governor signed, Senate Bill 1604. Among other things, that legislation transferred regulatory authority for uranium/by-product waste disposal to the TCEQ. (See *LLW Notes*, May/June 2007, pp. 9-10.) Technical review staff officially transferred to the TCEQ on July 1, 2007 and the new Uranium Technical Assessments Section of TCEQ continued the WCS application review until October 1, 2007. The by-product disposal regulations of 25 TAC 289.260 remain in effect until the TCEQ adopts its own rules.

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

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Low-Level Radioactive Waste Forum, Inc.

LLW Notes

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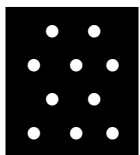
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Layout and Design: Rita Houskie, Central Interstate Low-Level Radioactive Waste Compact

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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

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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 Hosts Fall Meeting in Oak Brook, Illinois

The Low-Level Radioactive Waste Forum hosted its fall meeting on October 1 – 2, 2007 in Oak Brook, Illinois. Approximately 71 persons attended the meeting including 34 officials from states and compacts, 17 federal officials, 14 industry representatives, three individuals from various associations, and three consultants. In addition to the main meeting, an Officers' Meeting was held on Sunday evening, September 30, and an Executive Committee meeting was held on Monday morning, October 1.

The Central Midwest Interstate Low-Level Radioactive Waste Compact Commission sponsored the one and a half day meeting. In addition, various persons from the Illinois Emergency Management Agency (IEMA) provided logistical and staff support for the meeting.

The following items were discussed, presented or reported on during the course of the meeting:

- ♦ reports on new developments, including a focus session on recent developments regarding the Waste Control Specialists' license application for a low-level radioactive waste disposal facility in Texas, from members;
- ♦ the tracking and recovery of low-level radioactive waste sealed sources;
- ♦ reports, activities and future plans of the Advisory Committee on Nuclear Waste and Materials (ACNW&M);
- ♦ the impact of the Iraq War and pending closure of the Barnwell facility on the Army's waste disposal needs;
- ♦ recent reports by the U.S. Government Accountability Office on international waste management practices and on the structure and governance of interstate compacts;
- ♦ structure, issues and application of the Contaminated Debris Interagency Working Group;
- ♦ EPA's guides for responding to and communicating with the public about a radiological incident;
- ♦ understanding and applying EPA's debris disposal decision support tool;
- ♦ review of NRC's low-level radioactive waste storage guidance and the potential implications of the pending closure of the Barnwell facility to out-of-region waste;
- ♦ review of the classification of depleted uranium;
- ♦ developments in waste treatment and processing;
- ♦ the U.S. Department of Energy's Greater-than-Class C low-level radioactive waste environmental impact statement;
- ♦ challenges of licensing and building new nuclear power plants;
- ♦ NRC's recently issued paper on low-activity waste disposal authorizations under 10 CFR 20.2002 and providing options for change;
- ♦ NRC's final rule regarding the expanded definition of byproduct material pursuant to the Energy Policy Act of 2005;
- ♦ experiences of and recommendations from Citizens for Nuclear Technology Awareness on communicating nuclear issues with the public;
- ♦ the receipt, processing and disposal of radioactive material and low-level radioactive waste from foreign countries; and,
- ♦ projects and initiatives of the Illinois Emergency Management Agency including the orphan source recovery program and the high school initiative program.

For additional information, please contact the LLW Forum's Executive Director—Todd D. Lovinger—at (202) 265-7990 or at llwforuminc@aol.com.

LLW Forum Executive Committee Meets

Board Establishes 2008 Dues and Fees

The Executive Committee of the Low-Level Radioactive Waste Forum met in conjunction with the organization's fall meeting in Oak Brook, Illinois. Thereafter, the Board of Directors met in Executive Session to take up items proposed by the Executive Committee and to receive financial and proprietary reports.

The following is a report of items addressed and actions taken during those meetings, both of which were held on October 1, 2007.

Financial

The Executive Committee received the 2007 financial report from the Treasurer and the organization's Executive Director. Following discussion, the Board of Directors adopted an operating budget for 2008, per a recommendation from the Executive Committee.

2008 Membership Dues and Subscription Fees

The Executive Committee reviewed the current structure of membership dues and subscription fees and considered various proposals for 2008.

Fees and Dues After discussion, the Executive Committee recommended—and the full Board of Directors adopted—a modest membership dues increase for 2008 as follows:

- ◆ State Membership dues will increase by \$500 from \$4,000 to \$4,500
- ◆ Compact Membership dues will increase by \$1,000 from \$7,500 to \$8,500
- ◆ Non-Federal Associate Membership dues will increase by \$500 from \$5,000 to \$5,500
- ◆ Federal Associate Membership dues will increase by \$1,000 from \$10,000 to \$11,000

It is important to note that this is the first membership dues increase imposed by the Board of

Directors since the organization incorporated as a non-profit entity in 2000. The purpose of the dues increase is to address normal inflationary factors.

The Board of Directors did not, however, raise subscription and meeting registration fees for 2008. Accordingly, such fees will remain constant at 2007 levels. For an overview of such fees, please go to the LLW Forum's web site at www.llwforum.org.

Categories The Board of Directors created a new membership category for Non-Federal Associate Members that have more than one facility. This new membership is intended to address the recent spate of mergers and acquisitions by providing entities that have more than one operating site with an opportunity to purchase an “enhanced” membership that will provide the company with two seats at the table for two separate facilities, as well as additional access to materials and registration at LLW Forum meetings. (Currently, a “standard” Non-Federal Associate Membership applies to only one facility per entity.) The cost of the “enhanced” membership will be \$8,250 ... such that the company is effectively paying full price for the membership for the first facility and receiving a 50% discount on the membership for the second facility.

In addition, the Board of Directors created a new subscription category for consultants, contractors, user groups, and non-profits. This new subscription category will provide the purchaser with access to LLW Forum publications and to free registration for one individual per meeting. To be clear, this new category is a subscription ... not a membership ... so it does not provide the holder with a seat at the table or other membership privileges. It applies only to the limited categories of consultants, contractors, user groups, and non-profits and its approval is subject to the discretion of the organization's Executive Director.

Program Updates

During the Executive Committee meeting, members were provided with an update of program activities and future events involving the LLW Forum.

Waste Management '08 Symposium The LLW Forum will once again be organizing a panel at the upcoming Waste Management Symposium that is scheduled to be held in Phoenix, Arizona from February 25 – 28. The following individuals are currently scheduled to participate on the panel:

Steve Creamer of Energy *Solutions*
Larry Camper of the U.S. Nuclear Regulatory Commission
Susan Jablonski of the State of Texas
Kevin McCarthy of the Atlantic Compact
Michael Mobley of the Southeast Compact
Phillip Retallick of Clean Harbors Environmental

The Executive Committee expressed its appreciation to Kathryn Haynes for organizing the panel this year, as well as for the past several years. In order to share the workload, the Board of Directors has agreed that organization of the Waste Management panel in the future will be done by the Chair-Elect of the LLW Forum.

Web Site Updating and Overhaul The LLW Forum is undertaking an overhaul of the organization's web site ... which is located at www.llwforum.org. To date, updates have been made for contact information for all members and a link to the membership listing has been added to all pages. Current members are encouraged to go to the website and verify the accurateness of their listing. If members want their bios added, please send them to Todd Lovinger to arrange to have them linked to the site. In the coming year, additional changes will be made to the site. We view this as a joint venture and are asking for participation and feedback from all members and users. In addition, if you have documents that you want added or if you want links to your own web sites included, please notify Todd Lovinger. Also, please notify him with any suggested edits or changes to the site in general.

Scheduling of Future LLW Forum Meetings

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 in late 2007 or early 2008. 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. That 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.

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Atlantic Compact/State of Connecticut

UNC Decommissioning Plan Under NRC Review

A decommissioning plan for a former nuclear materials facility in New Haven, Connecticut is currently under review. The facility, which was owned and operated by United Nuclear Corp. (UNC) – Naval Products was closed in 1974, at which time its radioactive materials license was transferred to another UNC facility in Montville, Connecticut. The New Haven site was decontaminated and decommissioned from 1973 through 1976, with final radiological surveys finished in 1976.

UNC's license was amended in April 1976 to remove the New Haven facility. That action cleared the way for the site to be released for "unrestricted" use consistent with existing regulations and guidance at the time. After the Montville facility was decontaminated and decommissioned, the UNC license was terminated in June 1994.

In the early 1990's, however, NRC initiated a program to ensure that past licenses had been terminated in accordance with the agency's current release criteria for unrestricted use. (Current criteria require that members of the public should not be exposed to more than 25 millirems of radiation annually from a site released for unrestricted use. For comparison purposes, the average American is exposed to about 360 millirems of radiation each year from natural and manmade sources.) During the course of the review, it was determined that UNC did not have sufficient documentation to verify the New Haven facility had been properly decontaminated prior to its release for unrestricted use. Subsequent radiological surveys of the site found soil contaminated with uranium in excess of allowable levels. The residual radioactivity, according to NRC, does not pose a threat to the health and safety of members of the public.

UNC carried out additional studies of the site, performed further remediation work and then submitted a decommissioning plan to the NRC in June 2005. A Final Status Survey Plan, which details the UNC testing to be performed to demonstrate that any radioactive material left on-site meets acceptable limits, was provided to the NRC in October 2006.

NRC staff must complete a review of the proposal, including an environmental assessment, prior to approving the decommissioning plan. The review also entails an opportunity for any person whose interest may be affected by the action to request a hearing. Such a request must include specific contentions. A notice of opportunity to request a hearing will be published soon in the *Federal Register*. The deadline for requesting a hearing is 60 days after publication of the notice.

For additional information about the UNC decommissioning plan, go to www.nrc.gov/reading-rm/adams.html and enter the following accession numbers: ML051780083, ML051780088, ML051780091 and ML062910318.

Northwest Compact/State of Hawaii

License Issued for Hawaiian Irradiator

In late August, the U.S. Nuclear Regulatory Commission announced that it has issued a license to operate a commercial pool-type irradiator adjacent to the Honolulu International Airport. The applicant, Pa'ina Hawaii, plans to use the facility to irradiate fresh fruit and vegetables bound for the mainland from the Hawaiian islands, cosmetic and pharmaceutical products, as well as research and development projects.

Irradiator applications are reviewed by the NRC to ensure that facilities, procedures and equipment are adequate to protect employees and public health, safety and the environment in the vicinity of the facility from unnecessary irradiation. Other federal agencies, such as the Food and Drug Administration, are responsible for the safety of food and determine the types of food that may be irradiated.

In the case at hand, Pa'ina applied to the NRC for a license on June 27, 2005. NRC staff performed a thorough safety review of the application. In October of 2005, Earthjustice—on behalf of Concerned Citizens of Honolulu—submitted a request to the NRC for public hearings citing safety and environmental concerns. In January 2006, NRC's Atomic Safety and Licensing Board granted the petitioner's request for a public hearing to determine admissibility of their contentions.

Normally, the licensing of irradiators is categorically excluded from an environmental review, as described in NRC regulations. However, in the case at hand, NRC staff decided that it was prudent to do so. NRC then entered into a settlement agreement with Concerned Citizens of Honolulu which included a provision for the NRC staff to prepare an environmental assessment and hold a public meeting in Honolulu prior to making a final decision. The environmental assessment

considered potential impacts from transportation of the radioactive material, socioeconomics, ecology, water quality, and potential effects of aviation accidents from the nearby airport and natural phenomena.

A second public meeting was held in Honolulu on February 1, which drew about 100 persons, to seek public comment on the draft environmental assessment. The NRC staff has issued a final environmental assessment for the proposed irradiator resulting in a "Finding of No Significant Impact." NRC believes this final environmental assessment addresses the comments received during the public meetings and the remaining safety and environmental concerns. The document is available on the NRC web site at <http://www.nrc.gov/materials.html> by selecting "Pa'ina Irradiator" in the Quick Links box.

Based on this detailed review, the NRC has issued a license to Pa'ina allowing the possession and use of radioactive sources in an irradiator. The NRC will inspect key aspects of the construction of the facility to ensure compliance with the terms and conditions of its license before the facility begins operations. Further, the NRC will continue to perform periodic unannounced inspections of the facility to ensure its operations adhere to NRC requirements.

Northwest Compact/State of Idaho

American Ecology Recognized for Exemplary Safety Programs

On September 17, American Ecology Corporation announced that all four of its operating disposal sites have now been recognized for exemplary health and safety performance after the company's Richland, Washington site was named a Voluntary Protection Program (VPP) "Star" site by the State of Washington. Two of the company's other facilities—Grand View, Idaho and Robstown, Texas—have also received this prestigious recognition. American Ecology's Beatty, Nevada site was awarded Safety and Health Achievement and Recognition Program status earlier this year.

"Safety is a core value at American Ecology," said Stephen Romano, the company's President and Chief Executive Officer. "We intend to maintain this recognition for all of our operations through a continuing commitment to safety at all levels of our organization."

The Occupational Health and Safety Administration initiated the Voluntary Protection Program (VPP) in 1982. This federal agency works with state agencies and private companies to maintain worker protection programs that exceed OSHA requirements. As a result, the average VPP worksite boasts safety statistics that are twice as good as industry averages. Only 1,843 work places in the country currently enjoy VPP status. Participating companies are selected based on their health and safety management systems and proven safety performance. OSHA then conducts thorough on-site evaluations to judge how well these systems are working.

In a letter dated September 28, OSHA Regional Administrator Richard Terrill congratulated American Ecology for achievement of this important safety and health milestone—the

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Northwest Compact/State of Wyoming

Uranium Recovery Application Submitted

On October 3, Energy Metals Corporation US submitted an application to the U.S. Nuclear Regulatory Commission to construct and operate an in-situ uranium recovery facility at Moore Ranch in Campbell County, Wyoming. Energy Metals Corporation US—which is based in Edmund, Oklahoma—is a subsidiary of Energy Metals Corporation of Vancouver, British Columbia. This is the first application for a new uranium recovery facility submitted to the agency since 1988.

"In addition to the first applications for new reactors in decades, this application for a new uranium recovery facility is a further indicator that the nuclear renaissance is real," said NRC Chairman Dale Klein. "The NRC is prepared to meet the challenge of conducting these license reviews in a timely and efficient manner."

Existing uranium recovery facilities have indicated interest in resuming and expanding operations, and based on projections from industry, the NRC is expecting at least 15 applications for new facilities—including in-situ operations and conventional uranium mills—over the next three years.

In-situ recovery of uranium involves injecting a leaching agent, typically oxygen with sodium carbonate, through wells into underground ore to dissolve the uranium. The leach solution is pumped back to the surface and sent to a processing plant, where ion exchange is used to separate the uranium from the solution.

The underground leaching of the uranium also frees other metals and minerals from the rock. Before operations begin at Moore Ranch, the U.S. Environmental Protection Agency, with the assistance of the State of Wyoming, must exempt the groundwater aquifer from Safe Drinking Water

States and Compacts *continued*

Act requirements. After uranium recovery ceases, Energy Metals Corporation US will be required to return the groundwater affected by operations to pre-operation background concentrations.

NRC staff is currently reviewing the Energy Metals Corporation US application, which was submitted on October 3, to determine whether it contains sufficient information to begin detailed environmental and safety reviews. If the application is deemed acceptable, the agency will formally docket it and publish a notice of opportunity to request an adjudicatory hearing.

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recognition of VPP Star in Idaho, Washington, Nevada and Texas. Terrill's letter expressed appreciation for American Ecology's commitment to the health and safety of its employees and requested the company's support in helping OSHA to "convince other employers that attention to workplace safety and health truly adds value to their enterprise and contributes to the economic vitality of their community and of this nation."

American Ecology Corporation is based in Boise, Idaho. The company provides radioactive, PCB, hazardous and non-hazardous waste services to refineries, chemical production facilities, manufacturers, electric utilities, steel mills, medical and academic institutions and government agencies throughout the United States. American Ecology is the oldest radioactive and hazardous waste services company in the country.

For additional information, please contact Rich O'Hara of US Ecology at (208) 331-8400 or rohara@usecology.com.

Southeast Compact/State of Georgia

Oral Arguments Held on Proposed MOX Facility

On August 22, the U.S. Nuclear Regulatory Commission's Atomic Safety and Licensing Board (ASLB) heard oral arguments regarding the license application of Shaw Areva MOX Services, Inc. to operate a mixed-oxide (MOX) nuclear fuel fabrication facility near Aiken, South Carolina. Three organizations have petitioned to intervene in the license review including the Blue Ridge Environmental Defense League, Nuclear Watch South, and the Nuclear Information and Resource Service. The August 22 oral arguments—which were held in Augusta, Georgia—was intended to address the standing of these organizations to intervene and the admissibility of their five proposed contentions. Those contentions cover issues such as waste storage and disposal; emergency preparedness; and the environmental impacts of a potential terrorist attack on the facility.

On August 21, in advance of the oral arguments, the ASLB held an oral "limited appearance" session in North Augusta, South Carolina. This session was intended to allow members of the public who are not participating in the oral argument an opportunity to express their views about the proposed license to the judges. The judges typically do not respond to these statements at the session, although they are transcribed and are considered part of the record of the hearing.

The ASLB is the independent trial-level adjudicatory board of the NRC. Acting on behalf of the Commission and independent of the agency staff, individual Licensing Boards conduct public hearings concerning contested issues that arise in the course of licensing and enforcement proceedings regarding nuclear reactors and the civilian use of nuclear materials in the United States.

Licensing Boards consist of three administrative law judges. In the case at hand, the board is comprised of two attorneys and one technical expert.

Southwestern Compact/State of California

Diablo Canyon EA Issued

In late August, the U.S. Nuclear Regulatory Commission issued its final supplemental environmental assessment for a spent fuel storage facility under construction at the Diablo Canyon nuclear power plant in San Luis Obispo County, California. The supplemental assessment—which NRC staff conducted by order of the Commission in response to last year’s ruling by the U.S. Court of Appeals for the Ninth Circuit in *San Luis Obispo Mothers for Peace v. NRC*—concludes that construction, operation and decommissioning of the facility will not result in a significant effect on the human environment, even when potential terrorist attacks are considered.

The supplemental assessment—a draft of which was published on May 31 for public comment—considers the potential radiological impacts of terrorist acts on the Diablo Canyon spent fuel storage facility. NRC received 32 documents in response to the draft supplement, of which 12 were nearly identical. The staff grouped the comments into 17 general topics, and included its responses as an appendix to the final supplement.

The supplemental assessment concludes that the probability of a successful terrorist attack resulting in a significant radiation release is very low. NRC based this conclusion on the agency’s continual evaluation of the threat environment and coordination with other federal, state and local agencies; protective measures currently in place that reduce the chances of any terrorist attack being successful; the robust design of dry cask storage systems, which provide substantial resistance to penetration; and NRC’s security assessments of potential consequences of terrorist attacks at these facilities.

Despite the agency’s conclusion that the likelihood of a terrorist attack on the facility resulting in a

substantial radiological release is very low, the supplement also describes the potential impacts of such an event at Diablo Canyon. In so doing, it concludes that any radiation dose to members of the public near the plant from a successful terrorist attack would likely be below 5 rem, even in the most severe plausible threat scenarios. (Five rem is the maximum annual occupational dose limit for workers in the nuclear industry and the regulatory dose limit for persons outside the boundary of a spent fuel storage facility to receive from accidents.) In many scenarios, the hypothetical dose could be substantially less than 5 rem, or even none at all.

The supplemental environmental assessment is available on the NRC’s web site at <http://www.nrc.gov/waste.html> by selecting “Diablon Canyon” in the Quick Links box.

(Continued from page 1)

WCS Reaction

WCS issued a press release in response to TCEQ’s action on the company’s by-product license application. The release states in part as follows:

“This is a great accomplishment for our company and I am very proud of our team of professionals that prepared the license application,” said Rodney Baltzer, President of WCS. “The byproduct license application was a result of thousands of hours spent by WCS analyzing and documenting the characteristics of our site and describing the design and operations of the proposed byproduct disposal facility.”

“The byproduct license recommendation is a result of a very thorough and detailed review by TCEQ and the Texas Department of State Health Services,” Mr. Baltzer said.

“When approved, this license will allow us to safely dispose of the 3,776 canisters received from the Fernald, Ohio site remediation and currently in

storage at our site as well as provide a more economical disposal facility for uranium miners in Texas and New Mexico,” Mr. Baltzer said. “We have a great facility and a supportive community who welcome the addition of jobs that this will bring to the area.”

The WCS facility in Andrews County, Texas is currently licensed for the processing, storage and disposal of a broad range of hazardous, toxic and certain types of low-level and mixed low-level radioactive waste.

Next Steps

According to TCEQ, the applicant will be required to publish public notice in the local paper in Andrews County, Texas. The public will then have 30 days from the date of publication of the newspaper notice to submit written comments, requests for a public meeting, and requests for a contested case hearing to the Office of the Chief Clerk at the TCEQ.

A link to the WCS web site for the license application, the TCEQ Executive Director's technical summary, the draft license, and the draft environmental analysis are available for viewing on the TCEQ's web site at www.tceq.state.tx.us/goto/wcsbyproductapp/.

Texas and Tennessee

WCS and Studsvik Announce Teaming Agreement for Class B and C Waste Treatment and Storage

In September, Waste Control Specialists LLC (WCS) and Studsvik, Inc. announced that the companies had entered into a teaming agreement for the treatment and storage of Class B and C low-level radioactive waste. The agreement is intended to address issues arising from the scheduled closure of the Barnwell, South Carolina low-level radioactive waste disposal facility to out-of-region waste as of July 1, 2008. Such action would leave 36 states plus the District of Columbia and Puerto Rico without access to a disposal facility for their Class B and C waste. (The three states that make up the Atlantic Compact will still be able to dispose of their Class B and C waste at the Barnwell facility, and the 8 states that make up the Northwest Compact and the 3 states that make up the Rocky Mountain Compact will be able to dispose of their Class B and C waste at the Richland, Washington low-level radioactive waste disposal facility.)

Statements by Company Officials

WCS President Rodney Baltzer was quoted in the local press as saying, "With the closure of Barnwell on July 1, 2008 fast approaching, we believe that the treatment by Studsvik and the consolidated storage at WCS' facility of Class B & C low-level radioactive waste is a cost-effective and technically superior alternative to having multiple storage sites around the country. Studsvik is known for their process of removing organics and creating a more stable waste form. The WCS facility in Texas is well located to service power plants across the U.S. and offers the perfect site for the storage of this type of waste."

Studsvik President Lewis Johnson was quoted as saying, "This is an important option for the nuclear

States and Compacts *continued*

community. It makes more sense to have one centrally located facility to store a stable waste form than to have each power plant use its own space and resources to store much larger volumes of unprocessed waste ... Both companies are problem solvers and we are very excited to be offering this much needed turnkey option to the nuclear community."

Background

Waste Control Specialists WCS, which is located in Andrews County in West Texas, was formed in 1995. In 1997, construction was completed on the initial phase of the company's facility. Although the site was initially permitted for the processing, storage and disposal of certain hazardous and toxic wastes, subsequent permitting authorizations for the facility have been expanded to include the processing and storage of low-level and mixed low-level radioactive wastes and the disposal of certain types of exempt low-level radioactive wastes. Applications are currently pending to further expand the facility's permits to allow for the disposal of byproduct waste material, as well as disposal of low-level radioactive waste for the member states of the Texas Compact and federal low-level radioactive waste.

Studsvik Studsvik, Inc. is part of the Studsvik group. As a leading service supplier to the international nuclear industry, the company has a half-century's experience in nuclear technology and radiological services. Studsvik seeks to provide specialized services in four strategic business areas: waste treatment, decommissioning, service and maintenance and operating efficiency. The company has 1,300 employees in seven countries and its shares are listed on the Nordic Stock Exchange, MidCap.

Commonwealth of Massachusetts

Yankee Site Released for Unrestricted Use

In mid-August, the U.S. Nuclear Regulatory Commission announced that it has released a majority of the Yankee Nuclear Power Station near Rowe, Massachusetts for unrestricted public use. The action completes the decommissioning of the former nuclear power station portion of the site. Yankee's license still applies to the site's dry cask storage facility, where spent nuclear fuel from the plant's 30 years of operation is safely stored, plus a small parcel of land surrounding this facility. The total land remaining under the license is approximately five acres. The licensee, Yankee Atomic Electric Company, remains responsible for the security and protection of this land and the dry cask storage facility. The company is required to maintain \$100 million in nuclear liability insurance coverage for the facility.

The portion of the site released for unrestricted public use, approximately 30 acres, is below NRC safety 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.) According to the NRC, release of this land for unrestricted public use poses no threat to public health and safety.

Yankee Nuclear Power Station began commercial operations in 1961. The site ceased production on October 1, 1991. Yankee Atomic Electric Company initiated decommissioning of the site shortly thereafter. Dismantlement and decommissioning were completed in July of 2007. NRC surveys verified that cleanup met the 25 millirem per year requirement.

The Safety Evaluation Report of Yankee's amendment request that was performed by NRC is available in the agency's online documents database, ADAMS, at <http://www.nrc.gov/reading-rm/adams/web-based.html> using accession number ML071830515 in the search field.

U.S. Congress

Senator Alexander Expresses Disposal Concerns

During an October 3 hearing of the U.S. Senate's Environment and Public Works Subcommittee, Senator Lamar Alexander (R-TN) expressed concern about the pending loss of access for the disposal of Class B and C low-level radioactive waste for 36 states upon the scheduled closure of the Barnwell facility to out-of-region waste after June 2008. Lamar's comments, which were made during a hearing on the U.S. Nuclear Regulatory Commission's reactor oversight process, focused on the impact of the loss of disposal access to hospitals that use radioactive isotopes to treat cancer and other diseases.

"Low-level radioactive waste and its disposal have enormous impacts in human terms," said Senator Alexander. "St. Jude Hospital in Memphis helps treat children who are sick with cancer, giving 5,500 radiological treatments a year. They produce low-level radioactive waste, which has to be disposed of somewhere. And if we can't send it somewhere, which apparently we can't after the middle of next year, we have to store it on site. There are some problems with that."

In his questioning of NRC officials, Alexander stressed that several Tennessee facilities—including Tennessee Valley Authority's Sequoyah and Watts Bar plants, private companies, and universities and hospitals such as the University of Tennessee's Knoxville and Memphis campuses—all rely on the Barnwell facility for the disposal of Class B and C low-level radioactive waste. Using St. Jude as an example, Alexander expressed concern that hospitals will be limited in their treatment of patients with cancer if there is no disposal access for Class B and C waste. Alexander noted that three-quarters of the children that are treated at St. Jude each year have cancer.

"This will have a negative impact on patient care and medical research," said Alexander. "Having fewer options for the disposal of low-level radioactive wastes created by these treatments will result in higher costs for finding and treating cancer at places like St. Jude where \$300 million of its operating budget comes from charitable donations."

In his comments, Alexander predicted an explosion of nuclear power plants during the next 30 years, predicting that nuclear power would likely be the most efficient power source in the coming decades. Following up thereon, Alexander said "it is absolutely critical that we do our job in oversight to assure people in our region that this nuclear power can be as safe." Accordingly, he asked that the NRC examine recommendations for disposal options.

In response to Alexander's comments, NRC Chairman Dale Klein said, "Senator, you've touched on an issue that has serious consequences for the entire nation."

Annual Report to Congress Published

An unclassified version of the U.S. Nuclear Regulatory Commission's annual report to Congress outlining the previous year's security inspection program has been made available to the public. The report, which is required under the Energy Policy Act of 2005, covers the security inspection program, including force-on-force exercises, for commercial power reactors and certain fuel cycle facilities for calendar year 2006.

According to the report, NRC conducted 298 security inspections at commercial power reactors in 2006—of which 21 were force-on-force inspections—employing a well-trained mock adversary force to test a facility's ability to respond to the level of threat the facility is required to defend against. The reviews yielded 73 inspection findings, of which 67 were of very low security significance and 6 were of low-to-moderate security significance.

According to NRC, any potentially significant deficiencies in the protective strategy of a plant are promptly fixed or compensatory measures are put into place. Details of the findings are considered sensitive and not released to the public.

The report can be found on the NRC web site at <http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1885/>.

Alabama, Florida, Tennessee, Virginia and the Southeast Interstate Low-Level Radioactive Waste Management Commission v. State of North Carolina

Summary Judgment Motions Filed in Southeast Compact Dispute

On September 21, Motions for Summary Judgment were filed in the Supreme Court of the United States by the plaintiffs and the defendant in a lawsuit seeking the enforcement of sanctions against the State of North Carolina for its alleged failure to develop a regional low-level radioactive waste disposal facility. (See *LLW Notes*, May/June 2002, pp. 1, 11.) A Special Master appointed by the Court is currently reviewing the suit, which was initiated by the Southeast Interstate Low-Level Radioactive Waste Management Commission and several of its member states.

Background

The Complaint On June 3, 2002, the States of Alabama, Florida, Tennessee, and Virginia—as well as the Southeast Compact Commission—filed a "Motion for Leave to File a Bill of Complaint" and a "Bill of Complaint" in the U.S. Supreme Court against the State of North Carolina. The action, which accuses North Carolina of "failing to comply with the provisions of North Carolina and the Southeast Compact laws and of not meeting its obligations as a member of the Compact," seeks to enforce \$90 million in sanctions against the defendant state. It contains various charges against North Carolina, including violation of the member states' rights under the compact, breach of contract, unjust enrichment, and promissory estoppel. (See *LLW Notes*, May/June 2002, pp. 1, 11.)

For specific arguments raised in briefs filed by the petitioners and respondent, see [LLW Notes](#), July/August 2002, pp. 15-17. For a procedural history of prior filings in the case, see [LLW Notes](#), May/June 2003, pp. 10 - 12.

Original Jurisdiction Under Article III, Section 2 of the U.S. Constitution, the U.S. Supreme Court

may exercise original jurisdiction over a judicial case or controversy between states. In determining whether or not to do so, the Court has generally considered two factors: (1) the "nature of the interest of the complaining State," focusing mainly on the "seriousness and dignity of the claim," and (2) "the availability of an alternative forum in which the issue tendered can be resolved."

Motions for Summary Judgment

The following is a very brief overview of arguments presented in the Motions for Summary Judgment filed by the parties to the lawsuit. Persons interested in a more detailed analysis are directed to the documents themselves.

Plaintiffs' Motion In their Motion for Summary Judgment, the plaintiffs strenuously argue that North Carolina breached the compact and that they are therefore entitled to restitution.

To support this assertion, the plaintiffs first note that the compact itself expressly and unambiguously states that the Southeast Commission "is the judge" of the party states' compliance with compact conditions and requirements. The Commission has already made an authoritative determination that North Carolina breached the compact when it ceased licensing activities and refused to pursue development and operation of a regional disposal facility. That determination, argue the plaintiffs, is conclusive and the Court should defer thereto.

In the alternative, the plaintiffs contend that—even under a *de novo* standard of review—the Commission's finding that North Carolina breached the compact was correct and should be sustained. In this regard, the plaintiffs state that "For

approximately a year and a half between the time that North Carolina ceased licensing activities in December 1997 and the time that it withdrew from the Compact in July 1999, North Carolina refused to perform its duty under Article 5(c) to ‘take appropriate steps’ to license a regional waste disposal facility.” Such refusal, argue the plaintiffs, constituted nonperformance of North Carolina’s duty as a host state and breach of the compact. In addition, the plaintiffs assert that North Carolina breached the implied covenant of good faith and fair dealing by withdrawing from the compact “after having induced the other Party States to invest eleven years and \$80 million in its licensing effort, leaving the States with nothing to show for the enormous investment of time and money they had made.”

In conclusion, the plaintiffs argue that they “are entitled to restitution of the \$80 million benefit they conferred on North Carolina in reliance on the Compact, plus interest.” In this regard, the plaintiffs state that “North Carolina totally breached and repudiated the Compact by refusing to render the very performance that it agreed to exchange for the other States’ performance, thereby defeating the essential purpose of the Compact and depriving the other States of the benefit of their bargain.”

Defendant’s Motion In its Motion for Summary Judgment, defendant North Carolina adamantly denies that it breached the compact and argues that the plaintiffs’ non-contract claims seeking equitable relief fail for a number of reasons. Accordingly, the state denies that any restitution is due to the plaintiffs and requests dismissal of the action.

The state begins its motion by noting that the Preliminary Report issued by the Special Master found (1) that the Commission’s sanction order was not valid “because the Compact does not authorize the Commission to impose monetary sanctions against member States, and because North Carolina withdrew from the Compact prior to the imposition of sanctions” and (2) that North Carolina was within its rights in deciding to withdraw from the

compact. The state acknowledges, however, that while that conclusion foreclosed summary enforcement of the sanctions order, it left open the possibility for the Court to award monetary damages as an appropriate judicial remedy for the alleged breach.

Quoting from the Special Master’s Preliminary Report, the state then defines the issues now before the Court as “whether North Carolina breached the express terms of the Compact or a purported ‘implied obligation under the Compact not to withdraw after being selected as a host State,’ as well as ‘whether North Carolina and the Commission entered into any supplemental agreement outside the four corners of the Compact, the precise terms of any such agreement, and whether either party breached their agreement.’” (Citations omitted.)

In regard to the question of whether North Carolina breached a contract with the plaintiffs, the state contends that the face of the compact itself evidences that no express breach occurred, as the compact explicitly entitled North Carolina to withdraw before a facility was completed. The state goes on to argue that no supplemental agreement altering the terms of the compact existed, stating that the plaintiffs have not adduced through discovery any evidence of a *sub silentio* amendment or unwritten “supplemental agreement” that alters North Carolina’s rights and obligations under the compact.

As for the plaintiffs’ non-contractual claims seeking equitable relief, North Carolina contends that these must fail for the same reasons and others. Any promissory estoppel or similar claims, argues North Carolina, could be asserted only by the Commission and not by any of the plaintiff states because only the Commission (1) could claim that it owned the money and (2) transferred the disputed funds to the state. The Special Master’s Preliminary Report recognized, according to North Carolina, that the state is immune from any claim that can be asserted only by the Commission. Accordingly, North

Carolina asserts that the non-compact based claims for equitable relief must be dismissed.

In addition, North Carolina argues that (1) the Commission's restitution claims are barred by the state's statute of limitations, (2) the Voluntary Payments Doctrine precludes the plaintiffs' claims for equitable relief, and (3) North Carolina did not receive a net benefit from the surcharge funds and therefore was not unjustly enriched.

Rocky Mountain Compact/State of Colorado

Colorado Attorney General Probing Adams County

According to local news reports, Colorado Attorney General John Suthers is investigating whether Adams County violated state law by using revenues from Clean Harbors Deer Trail Facility ("CHDTF") to sue the company over plans to dispose of low-level radium.

CHDTF, which is located approximately 75 miles directly east of downtown Denver, is the only permitted hazardous waste disposal facility in the State of Colorado.

Background

In September 2002, Clean Harbors submitted an application to the Colorado Department of Public Health and Environment ("CDPHE") for renewal of the facility's 1998 State Resource and Conservation Recovery Act ("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. Then, in January 2005, the company submitted an application to CDPHE for a radioactive materials license.

In April 2005, CDPHE submitted an application for a regional facility to the Rocky Mountain Low-Level Radioactive Waste Board. The compact board designated CHDTF as a limited regional disposal facility in June 2005.

In December 2005, CDPHE issued a final hazardous waste permit and a radioactive materials license to CHDTF that authorizes, among other things, the disposal of radioactive wastes containing or contaminated with radioactive materials with a maximum activity of up to 2,000 picocuries per

gram (pCi/g"). CHDTF began accepting for disposal at its facility wastes containing low-level radium in December 2006.

For additional information, see LLW Notes, May/June 2007, pp. 12 – 13.

Prior Litigation

On January 20, 2006, Adams County filed two lawsuits against CDPHE. One suit—which was filed in the District Court of Adams County—challenges the facility's hazardous waste permit renewal. The other suit—which was filed in the District Court for the City and County of Denver—challenges the issuance of the radioactive materials license to the facility. (See *LLW Notes*, January/February 2006, pp. 19 - 20.) On July 5, 2006, the District Court of Adams County vacated a judicial stay of CHDTF's radioactive materials license via bench verdict. In so doing, the court found among other things that plaintiff Adams County Board of Commissioners does not have judicial standing to sue the State of Colorado. (See *LLW Notes*, July/August 2006, pp. 10-11.)

Thereafter, on April 25, 2007, Adams County filed a lawsuit directly against Clean Harbors itself in the District Court of Adams County, Colorado. In the lawsuit, Adams County claims, among other things, that CHDTF has violated applicable laws by operating a regional low-level radioactive waste disposal facility without applying for and obtaining the necessary permit from Adams County. The county asserts that CHDTF's 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. As such, Adams County is seeking civil penalties, injunctive and declaratory relief from the court. (See *LLW Notes*, May/June 2007, pp. 12 – 13.)

Issues

At issue is whether Adams County abused a state law that allows counties to collect money from hazardous waste sites for reimbursement for additional expenses, such as hiring inspectors or repairing roads.

According to an official from Clean Harbors:

"Colorado's Hazardous Waste Disposal Siting Law allows County Government's to collect up to 2% of gross revenues per year to fund highway improvements, emergency response capabilities and other contingency efforts related to operation of the regulated facility. The Colorado Legislation does not authorize the fund's use to file civil and or criminal charges against a permittee nor a state agency such as the CDPHE."

Attorney General Suthers, according to the Denver Post, has sent Open Records Requests to discover whether Adams County used such funds to pay more than \$1 million in legal costs associated with its lawsuits against CHDTF.

The expenses collected were effectively a "slush fund," Clean Harbors Executive Vice President William Geary told the Post. "It has cost the state of Colorado probably [millions] to defend [and] it certainly has cost us that and much more," he added.

According to the Post, Suthers' office is close to making a decision on whether to pursue further action against the county.

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

Injunctive Relief Denied to DOE re Water for Yucca Mountain

On August 31, 2007, a federal judge denied an emergency motion from the U.S. Department of Energy for injunctive relief to prevent Nevada officials from denying water permits for the proposed Yucca Mountain high-level radioactive waste repository. DOE officials have indicated that they need approximately 8 million gallons of water to continue work at the proposed site, but Nevada officials have refused to issue the required water permits and recently issued an order requiring DOE to stop using Nevada's water for drilling boreholes near the mountain.

Basis for Increased Water Needs

The dispute between federal and state officials over issuance of water permits has been ongoing since the project first began, at which time a state engineer first denied water permits that will eventually be needed for construction of the proposed repository at Yucca Mountain. The dispute escalated recently when the engineer denied permits for significantly more water that federal officials say is needed to drill test holes at the site and ordered the department to stop using the state's water for such activity. A cease-and-desist order to that effect was issued by the engineer on June 1 and then lifted temporarily only to be reinstated on July 20.

Federal officials need more water due to an increase in the number of test holes that they plan to drill from about 15 to approximately 80. The boreholes are part of the department's geotechnical work to ensure that surface facilities where spent nuclear fuel assemblies would be handled and stored before entombment in the mountain will be safe from earthquakes and floods. Water is used to cool and

lubricate drill bits and to make mud for the collection of rock samples.

Analysis by the Court

In a strongly worded opinion, U.S. District Court Judge Roger Hunt denied the department's request for injunctive relief and criticized DOE for violating a court-approved agreement on use of the state's water at Yucca Mountain. In his ruling, Hunt said that any perceived hardship that the department encountered over the state engineers cease-and-desist order was "self-inflicted" and he noted that Congress has not taken any action to preempt the state's water laws. Hunt also held that DOE officials had made contradictory arguments that have no merit and are not supported by federal law. "The validity of Western states' groundwater rights and the right to regulate water in the public interest is not a right to be taken lightly, nor is it a right that can cavalierly be ignored or violated by a federal agency," Hunt said in his 24-page opinion.

Hunt also indicated that if—as Nevada officials contend—the need for increased drilling is part of the site characterization, then "it would appear that the DOE misled Congress and the president" because all site characterization was supposed to have been completed in 2002, when DOE officials said Yucca had met its criteria as a suitable site. Department officials deny that the drilling is part of site characterization, but Hunt found that DOE's "own documents contradict that argument." Hunt goes on to state that either the borehole work is "unreasonable and without demonstrable, legitimate purpose ... [or] it shows a complete lack of confidence in [the department's] ability to obtain a license from the NRC because of weakness in its original scientific studies."

Potential Implications

The denial of access to millions of gallons of state-controlled water could mean that the department's only option would be to truck in water over long distances. This would place another burden on the

Federal Agencies and Committees

project and would potentially be another activity that state officials could seek to block in their efforts to fight the proposed facility. A state official was quoted in the Nevada press as saying that the state engineer has the authority to prohibit DOE from transporting water in from out of state or other sources in the state for use at Yucca Mountain. “You simply can’t use water in this state without his approval period, no matter how you acquire it,” said the official.

Federal officials are reviewing the court’s decision and have not yet commented on it. However, Robert Loux, the Executive Director of the Nevada Agency for Nuclear Projects, says that the ruling is important because it may prevent federal officials from collecting data that would be crucial to any future license application for the proposed facility. According to Loux, DOE would ultimately need sweeping exemptions from federal environmental, health, water and transportation laws to move forward with the project.

Background

The proposed Yucca Mountain repository site is located approximately 90 miles north of Las Vegas. Federal officials are seeking to dispose of approximately 70,000 metric tons of high-level radioactive waste from across the nation at the site. In 2002, President Bush and the U.S. Congress approved selection of Yucca Mountain as the preferred site for such waste after it was recommended by then-Energy Secretary Spencer Abraham. However, the project has been stalled by a series of legal and political setbacks.

DOE officials have indicated that they plan to file an application next year with the U.S. Nuclear Regulatory Commission to build the proposed repository.

Advisory Committee on Nuclear Waste & Materials (ACNW&M)

ACNW&M Receives NEI Briefing on LLRW Issues

The U.S. Nuclear Regulatory Commission’s Advisory Committee on Nuclear Waste and Materials (ACNW&M) met on September 18-20, 2007 at the U.S. Nuclear Regulatory Commission’s headquarters in Rockville, Maryland. Among other things, committee members received briefings from a Nuclear Energy Institute (NEI) representative on (1) what nuclear power plants are doing to reduce the volume of Class B and C commercial low-level radioactive waste being generated and (2) activities of a recently formed NEI executive-level committee examining issues related to the generation, management, and disposal of commercial low-level radioactive waste.

Other issues on the agenda for the meeting included

- ◆ semiannual briefing by the Office of Federal and State Materials and Environmental Management Programs (FSME),
- ◆ discussion of the NRC role in the International Committee on Radiological Protection (ICRP),
- ◆ corrosion of waste package and drip shield materials in a repository environment,
- ◆ mechanisms for estimating juvenile waste package failures, and
- ◆ dissolution processes for commercial spent nuclear fuels in a repository environment.

Full agendas and transcripts for ACNW&M meetings can be found at <http://www.nrc.gov/reading-rm/doc-collections/acnw/agenda/2007>. For additional information, contact Antonio Dias at (301) 415-6805.

Advisory Committee on Reactor Safeguards

ACRS Receives Industry Briefings

The U.S. Nuclear Regulatory Commission's Advisory Committee on Reactor Safeguards (ACRS) met at NRC headquarters in Rockville, Maryland on October 4-6. During this meeting, committee members discussed, among other things, digital instrumentation and controls project plans and interim staff guidance, a draft generic letter on managing gas intrusion in emergency core cooling systems, decay heat removal and containment spray systems, and dissimilar metal weld issues. The committee also received briefings from the Nuclear Energy Institute, Electric Power Research Institute, and Institute of Nuclear Power Operations regarding industry activities.

The committee had previously met at NRC headquarters on September 6-8. During the course of that meeting, committee members discussed, among other items, a final review of the license renewal application for the Pilgrim Nuclear Power Station. In addition, the committee discussed the draft ACRS report on the NRC safety research program and reviewed a draft report on the quality of selected NRC research projects.

The ACRS advises the Commission on licensing and operation of nuclear power plants and related safety issues.

Full agendas and transcripts for ACRS meetings can be found at <http://www.nrc.gov/reading-rm/doc-collections/acrs/agenda/2007>. For additional information, contact Sam Duraiswamy at (301) 415-8066.

U.S. Environmental Protection Agency

EPA Releases TENORM Report for Public Comment

EPA is making the second volume of a report on Technologically Enhanced Naturally Occurring Radioactive Materials from Uranium Mining available for public review. This volume, "Investigation of Potential Health, Geographic, and Environmental Issues From Abandoned Uranium Mines," provides a general scoping evaluation of potential radiogenic cancer and environmental risks posed by small abandoned uranium mines in the western United States. While this technical report has been peer reviewed, EPA will take into consideration public comments for revision before the report is finalized. Comments should be provided no later than October 30. Send comments to radiation.questions@epa.gov.

Volume I of the report, "Mining and Reclamation Background," was released in 2006 and updated in June 2007. It examines various aspects of uranium mining and processing in the United States, including: its occurrence in natural settings; industrial uses; extraction methods employed over the last century; solid and liquid wastes from various extraction methods; and reclamation and remediation methods to restore the extraction site's environment.

Both volumes can be obtained at <http://www.epa.gov/radiation/tenorm/pubs.htm>. Also available is a database compiling locations identified as associated with uranium, which EPA developed by combining a number of local, state, Tribal, and federal sources. More than 14,000 locations are included, ranging from large industrial mines to exploratory sites. The database is designed for use with Geographic Information System (GIS) software.

U.S. Nuclear Regulatory Commission

NRC Commissioner McGaffigan Dies

On September 2, 2007, Edward McGaffigan, Jr.—the longest serving member of the U.S. Nuclear Regulatory Commission and a public servant for more than 31 years—passed away following a long battle with melanoma. McGaffigan, who was 58 at the time of his death, died at Capital Hospice in Arlington, Virginia.

McGaffigan was originally appointed to the Commission—which regulates the safety and security of nuclear materials and nuclear power plants—by President Clinton in 1996 and then again in 2000. He was appointed to the Commission by President Bush in 2005 and in October of that year began an unprecedented third term on the Commission. On November 3, 2006, he became the panel's longest serving member and he marked 10 years of service to the NRC on November 3, 2006. His death followed the 11th anniversary of his first swearing-in by a matter of days.

During his tenure at the NRC, McGaffigan focused on improving the effectiveness and efficiency of agency processes dealing with reactor oversight and reactor license renewals. Since the terrorist attacks of September 11, 2001, McGaffigan helped design an enhanced security posture at the nation's 104 commercial nuclear power reactors and other NRC licensees.

"Ed was talented, highly motivated and a person of strong values," said NRC Chairman Dale Klein. "He always took the view of what is best for the American people, not what might bring attention to himself. Our prayers are with his family." Former Chairman Nils Diaz, who served with McGaffigan for almost 10 years on the independent agency, added, "Ed, above all, wanted to serve our nation with distinction and with a passion to do what was

better for the common good. He did just that for over 30 years. Our nation is better for his many contributions and every one of us is better for working with him."

McGaffigan was recently awarded the prestigious Henry DeWolf Smyth Nuclear Statesman Award by the American Nuclear Society (ANS) and the Nuclear Energy Institute (NEI). Although he was too ill to travel, he accepted the award in videotaped remarks that were shown at the awards ceremony. In November 2006, McGaffigan was awarded NRC's highest honor, the Distinguished Service Award. He was also honored with the ANS' Distinguished Public Service Award.

Before joining the NRC, McGaffigan was a legislative assistant and then legislative director to Senator Jeff Bingaman (D-NM) where he worked on defense policy, personnel and acquisition reform, non-proliferation and export control policy. "Ed McGaffigan was a man of great intellect and vision. He understood policy and politics, which made him an extraordinary public servant," said Bingaman. "Ed made a great contribution to me in my efforts in the Senate during the time he worked with me. He was universally respected and admired for his ability and integrity. I have lost a great friend and trusted counselor."

McGaffigan was known for bluntly and publicly challenging critics of the NRC whom he believed were fear-mongering and misusing science to advance their causes. He was highly critical of the management of the proposed high-level nuclear waste repository at Yucca Mountain, Nevada—arguing that if the project had long-term stable management it would be more efficient. He continued to work on the issues that counted to him – particularly improving agency efficiency – from the day he first was diagnosed, and he continued working on them as best he could until his death.

In January 2007, when it appeared that McGaffigan would not be able to defeat the melanoma, he

announced that he would leave the NRC if the Senate could quickly confirm a successor. However, in late March, McGaffigan wrote to President Bush that he would stay on because the chemotherapy he was undergoing had slowed the progression of the disease.

McGaffigan's wife of 18 years, Peggy Weeks McGaffigan, passed away after a long, debilitating illness in 2000. He is survived by a son, Edward Francis, and a daughter, Margaret Ruth McGaffigan, both of Arlington, Virginia—as well as by his mother and two siblings.

Although NRC's five year terms run from July 1 to June 30, the agency notes in a press release that "it is not unusual for an appointment to be confirmed after July 1 or there to be breaks in service between terms."

Final Byproduct Material Rule Published

The U.S. Nuclear Regulatory Commission has published its final rule expanding the definition of radioactive materials subject to its regulatory authority, thereby implementing the provisions of the Energy Policy Act of 2005. Although the Commission approved the rule by a 5 to 0 vote affirmed on May 14, they directed the staff to incorporate several changes and to obtain approval from the Office of Management and Budget for information-collection requirements before publishing the rule. (See *LLW Notes*, May/June 2007, pp. 1, 16.) The new regulations, which were published on October 1 in the *Federal Register*, become effective on November 30, 2007.

The Energy Policy Act of 2005 expanded the definition of so-called "byproduct material" subject to the NRC's authority to include discrete sources of radium-226, material made radioactive in a particle accelerator, and other radioactive material that the Commission determines could pose a threat to public health and safety or the common defense and security. These materials were previously regulated by the states.

The legislation made NRC's authority over these new materials effective immediately. However, the agency issued a waiver allowing states to continue to regulate them while the agency drafted regulations to implement the new requirements. A transition plan will soon be published by the NRC for assuming the new authority over these materials. The 34 Agreement States—which regulate byproduct materials in their states under agreements with the NRC—will maintain authority over the new materials under their agreements with the NRC.

The text of the rule and other information about NRC's plans for implementing its new authority are posted on the NRC web site at <http://nrc-stp.ornl.gov/narmtoolbox.html>.

NRC Seeks Comments on Draft Guide re Minimization of Radioactive Waste

The U.S. Nuclear Regulatory Commission is accepting comments on Draft Regulatory Guide DG—4012, “Minimization of Contamination and Radioactive Waste Generation in Support of Decommissioning,” until November 1, 2007. Comments submitted after that date will be considered if it is practical to do so. The draft guide was initially issued for public comment as part of the Agency’s Regulatory Guide Series on July 31, 2007. (See 72 *Federal Register* 41,794 at <http://www.gpoaccess.gov/fr/retrieve.html>.)

The series was developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC’s regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses. Regulatory guides are not substitutes for regulations, and compliance with regulatory guides is not required.

Background

The final rule for “Radiological Criteria for License Termination” includes specific requirements in 10 CFR 20.1406, “Minimization of Contamination,” (Compatibility Category C) for the submission of information by license applicants with regard to design and operational procedures for minimizing contamination of the facility and environment and for minimizing radioactive waste generation and facilitating decommissioning. Specifically, the document states, “Applicants for licenses, other than renewals, after August 20, 1997, shall describe in the application how facility design and procedures for operation will minimize, to the extent practicable, contamination of the facility and the environment, facilitate eventual

decommissioning, and minimize, to the extent practicable, the generation of radioactive waste.”

Accordingly, a license applicant should consider the total life cycle of the facility, from initial facility layout and design to programs and procedures for operation to final decontamination and dismantling at the time of decommissioning. Although the design and operating procedures might change during the operating life of a facility, the objectives of 10 CFR 20.1406 need to be addressed.

The Draft Regulatory Guide

The purpose of the draft regulatory guide is to present guidance that will assist license applicants in effectively implementing the above-described license requirement. Guidance presented in the document consists of specific design considerations drawn from nuclear industry experience and lessons learned from decommissioning. Such design suggestions provide examples of measures that can be combined to support a contaminant management philosophy. The principles embodied in this philosophy are three-fold:

- (1) prevention of unintended release;
- (2) early detection, if there is unintended release of radioactive contamination; and,
- (3) prompt and aggressive cleanup, should there be an unintended release of radioactive contamination.

NRC believes that following the guiding principles through the use of “good” engineering and science, as well as careful attention to operational practices, should result in fulfillment of the requirements of 10 CFR 20.1406. NRC cautions that all of this should be considered in the context of the life cycle of the facility from the early planning stages through the final plans for decommissioning and waste disposal. Accordingly, the draft regulatory guide describes some of the mechanisms that can be employed for the life cycle planning.

The extent to which the draft regulatory guide applies will vary depending upon the type of activity

Federal Agencies and Committees *continued*

or facility since license applications submitted to NRC cover over 100 different kinds of activities with varying levels of potential for contamination of a facility and the environment and for the generation of radioactive waste. For instance, license applications range from large complex facilities such as power reactors and reprocessing facilities that handle significant volumes of radioactive solids, liquid, and gases to small users of sealed sources.

Regulatory Guides in the Regulatory Guides document collection of the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/doc-collections/>. Electronic copies are also available in ADAMS at <http://www.nrc.gov/reading-rm/adams.html> under Accession Number ML071210011.

Submission of Comments

According to the *Federal Register* notice, comments on the draft regulatory guide may be accompanied by relevant information or supporting data, and should mention DG—4012 in the subject line. Comments submitted in writing or in electronic form will be made available to the public in their entirety through the NRC's Agencywide Documents Access and Management System (ADAMS). Personal information will not be removed from the comments.

Comments may be mailed to the following address:

Rulemaking, Directives and Editing Branch
Office of Administration
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Comments may also be emailed to NRCREP@nrc.gov or may be submitted via the NRC's rulemaking web site at <http://ruleforum.llnl.gov>. They may also be faxed to (301) 415-5144.

Comments that are received after November 1, 2007 will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, NRC notes "comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time."

Electronic copies of Draft Regulatory Guide DG—4012 are available through the NRC's public web site under Draft

NRC to Develop GEIS for Uranium Recovery Operations

The U.S. Nuclear Regulatory Commission is seeking public comment for a “generic environmental impact statement” (GEIS) that the agency intends to develop for uranium recovery operations—numerous applications for which the agency is expecting in the next two to three years—including in situ leach recovery facilities and conventional mills.

The GEIS is intended to address common issues associated with environmental reviews of in situ leach and conventional milling facilities located in the western United States. Because there are environmental issues common to both types of facilities, the NRC staff will be addressing these common issues generically to aid in a more efficient environmental review for each separate license application, if and when these applications are submitted.

On September 27, NRC staff held a public meeting in Gallup, New Mexico to discuss the scope of the GEIS. During the course of the meeting, members of the public were invited to comment on environmental issues that will be addressed in the GEIS including land use, public and occupational health, waste management, water resources, air quality, historical resources and others. Previously, NRC held two public meetings on this topic in August 2007 in Albuquerque, New Mexico and Casper, Wyoming.

Information about the GEIS was published in the *Federal Register* on July 24 and August 31. The agency accepted written comments on the scope of the GEIS until October 8.

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

- ◆ accepted oral comments from members of the public on issues pending in an Atomic Safety and Licensing Board (ASLB) proceeding regarding the license renewal application for the Vermont Yankee nuclear power plant;
- ◆ held public meetings on a recently-issued draft environmental impact statement for the Wolf Creek nuclear power plant;
- ◆ conducted two public meetings in Waynesboro, Georgia to accept public comments on any potential environmental impacts from license renewal at the Vogtle nuclear power plant;
- ◆ conducted two public meetings in Cortlandt Manor, New York to accept public comment on any potential environmental impacts from license renewal at the Indian Point nuclear power plant;
- ◆ held an evidentiary hearing on an issue raised by a coalition of environmental groups with regard to an application to extend the Oyster Creek nuclear power plant’s operating license; and,
- ◆ announced that an application for a 20-year renewal of the operating licenses for the Beavertown nuclear power plant, Units 1 and 2, is available for public review.

Vermont Yankee Nuclear Plant

On October 11, three administrative judges handling the Vermont Yankee adjudicatory proceeding heard oral comments from interested members of the public on issues regarding the license renewal application for the Vermont Yankee

Federal Agencies and Committees *continued*

nuclear power plant. The remarks, which were transcribed, are known as “limited appearance statements.” In an order scheduling the sessions, the ASLB stated that the purpose of seeking the limited appearance statements is to allow members of the public to alert it and the parties involved to areas relating to admitted contentions on the plant’s license renewal application in which evidence may need to be acquired, “and to assist the Board in its consideration of these issues.”

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 27, 2006. The current operating license expires on March 21, 2012.

The Vermont Department of Public Service (DPS), the Attorney General of the Commonwealth of Massachusetts, the Town of Marlboro, and the New England Coalition (NEC) filed four separate requests for a hearing on the application. In an order issued on September 22, 2006, the Board admitted contentions submitted by the DPA and NEC, thereby making both a party to the proceeding. The ASLB panel also granted those organizations’ requests to adopt one another’s contentions. On November 17, 2006, the Board granted a request by the State of New Hampshire to participate in the proceeding as an interested state. The sole DPS contention admitted has now been settled, but DPS remains a party to the proceeding since it adopted NEC’s contentions.

Information about the Vermont Yankee license renewal application is posted at <http://www.nrc.gov/reactors/operating/licensing/renewal/applications/vermont-yankee.html>.

Wolf Creek Nuclear Plant

On November 8, NRC will hold two public meetings in Burlington, Kansas to accept comments on a draft report that assesses the environmental impact of extending the operating license for the Wolf Creek nuclear power plant. The NRC report, known as the Draft Supplemental Environmental

Impact Statement, was issued on September 18. It preliminarily recommends that the Commission determine that the adverse environmental impacts of license renewal for the Wolf Creek Generating Station plant are not so great that preserving the option of license renewal for energy planning decision-makers would be unreasonable. This recommendation is based on: 1) the analysis and findings in the Generic Environmental Impact Statement used for license renewal reviews; 2) the plant-specific environmental report submitted by Wolf Creek Nuclear Operating Company; 3) NRC consultation with other federal, state and local agencies; 4) the NRC staff’s own independent review; and, 5) the NRC staff’s consideration of public comments received during the environmental scoping processes.

NRC staff will also consider written comments on the draft report submitted before December 26. Comments can be submitted by mail to U.S. Nuclear Regulatory Commission, Christian Jacobs, Environmental Branch B, Division of License Renewal, Mail Stop O-11F1, Washington, DC 20555-0001, or via e-mail to WolfCreekEIS@nrc.gov.

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>. The draft report is posted on the NRC web page at <http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1437/supplement32/>.

Vogtle Nuclear Plant

NRC staff accepted public comments on any potential environmental impacts from license

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renewal at the Vogtle nuclear power plant during two meetings on September 27. The meetings were held in the auditorium at the Augusta Technical College's Waynesboro campus. There was an open house one hour prior to each meeting to allow interested persons to ask questions or talk informally with NRC staff. However, formal comments on environmental issues that the NRC should consider during its review were only accepted during the transcribed meetings.

Vogtle Units 1 and 2 are pressurized water reactors located about 26 miles southeast of Augusta, Georgia. The current operating licenses expire on January 16, 2027 for Unit 1 and on February 9, 2029 for Unit 2. Vogtle's operator, Southern Nuclear Operating Co., submitted the license renewal application on June 29.

During its review of the application, NRC staff will prepare a draft environmental impact statement. The comments provided at the meetings on September 27 will be considered as that report is being developed. When the draft version of the report is completed, the 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 Vogtle plant license renewal application is available on the NRC web site at <http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html>.

Indian Point Nuclear Plant

On September 19, the U.S. Nuclear Regulatory Commission conducted two public meetings in Cortlandt Manor, New York to accept public comments on potential environmental impacts from a license renewal application for the Indian Point nuclear power plant. An open house was held one hour before each meeting to provide citizens with an opportunity to talk informally with agency staff. Formal comments, however, were only accepted during the transcribed meetings.

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 the meetings 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>.

Oyster Creek Nuclear Plant

On September 24, a three-member ASLB panel conducted an evidentiary hearing on an issue raised by a coalition of environmental groups with regard to an application to extend the Oyster Creek nuclear power plant's operating license. Members of the public were allowed to observe the sessions—which were held in Toms River, New Jersey—but were not allowed to participate.

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.

The State of New Jersey and a coalition of environmental groups had requested a hearing on AmerGen's application. The state's request was eventually turned down, but the coalition had a single contention admitted. The contention relates to the plant's drywall shell, a bulb-shaped, steel liner

Federal Agencies and Committees *continued*

that surrounds the reactor vessel. In the event of a severe accident at the plant, the shell would direct steam toward a large reservoir of water at the base of the reactor building, where it would be cooled and condensed. The coalition, however, has raised concerns about corrosion of this liner, specifically in what is known as the sandbed region.

During the 1980s, the plant's then-owner determined that water had accumulated in a sandbed that surrounded a lower section of the shell, thereby causing corrosion. In the early 1990s, after evaluation, the sandbed was removed and the liner coated with an epoxy. The company took readings during subsequent shutdowns and determined the corrosion had been abated. Although that testing was suspended for several outages, AmerGen performed visual and ultrasonic tests during an outage earlier this year and informed NRC that those examinations confirmed that the thickness of the drywell shell remained within safety margins.

AmerGen has proposed taking more ultrasonic measurements in 2008, and then during every other refueling/maintenance outage, unless analysis of the measurements establishes that the period between inspections needs to be increased. The coalition argues in its contentions, however, that the proposed period of ultrasonic inspection in the sandbed area is not adequate.

Information about the Oyster Creek renewal application is available at <http://www.nrc.gov/reactors/operating/licensing/renewal/applications.oystercreek.html>.

Beaver Valley Nuclear Plant

On September 7, NRC announced that an application for a 20-year renewal of the operating licenses for the Beaver Valley nuclear power plant, Units 1 and 2, is available for public review.

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. FENOC originally submitted a license renewal application for Beaver Valley in March 2005. The NRC returned that application as incomplete and unacceptable for docketing.

NRC staff is currently conducting its initial review of the new application to determine whether it contains sufficient information required for the formal safety and environmental 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.

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.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>.

Review Process Discussed for Expected New Reactor Applications

U.S. Nuclear Regulatory Commission staff recently conducted several public meetings to discuss how the agency will review expected Combined License (COL) applications for new reactors at the North Anna, Shearon Harris, Bellefonte, Summer, and Cherokee County sites.

NRC reviews of these and other similar applications that are expected before the end of the year could affect nearby communities. Accordingly, the meetings allow NRC to work with residents to help them to understand and participate in the process.

COL Basics

A COL, if issued, is authorization from NRC to construct and, with conditions, operate a nuclear power plant at a specific site and in accordance with laws and regulations.

At meetings on expected COL applications, NRC staff give presentations to describe the overall COL review process, which includes safety and environmental assessments, as well as how the public can participate in the process. The NRC usually hosts an open house for an hour prior to the meetings so that members of the public have the opportunity to talk informally with agency staff.

Additional information on the NRC's new reactor licensing process is available on the agency's web site at <http://www.nrc.gov/reactors/new-reactor-licensing.html>.

North Anna

A public meeting was held in Mineral, Virginia on October 24 to discuss how NRC will review an expected COL application for a new reactor at the North Anna site, about 40 miles northwest of

Richmond. The prospective applicant, Dominion, has told the NRC that it intends to apply later this year for a license to build and operate an Economic and Simplified Boiling Water Reactor (ESBWR) at North Anna.

The ESBWR is under NRC review to be certified as a reactor design that can be referenced in a COL. It is a 1,600 Mwe, natural-circulation boiling water reactor that incorporates passive safety systems.

Shearon Harris

NRC staff conducted a public meeting in Apex, North Carolina on September 18 to discuss how the agency will review an expected COL application for new reactors at the Shearon Harris site, about 20 miles southwest of Raleigh. The prospective applicant, Progress Energy, has told the NRC it intends to apply in a few months for a license to build and operate two AP1000 reactors at Harris.

The AP1000 is one of four NRC-certified reactor designs that can be referenced in a COL. It is a 1,000 Mwe advanced pressurized water reactor that incorporates passive safety systems and simplified system designs. The AP1000 is similar to another certified design, the AP600, but uses a taller reactor vessel to accommodate longer fuel rods, and also includes larger steam generators and a larger pressurizer.

Bellefonte

On September 11, a public meeting was hosted by NRC staff in Rainsville, Alabama to discuss the agency's plans for review of an expected COL application for new reactors at the Bellefonte site near Scottsboro. The prospective applicant, Tennessee Valley Authority, has informed NRC that it intends to apply later this year for a license to build and operate two AP1000 reactors at Bellefonte. *(For information on the AP1000, see above under "Shearon Harris.")*

Cherokee County

NRC staff held a public meeting in Gaffney, South Carolina on August 30 to discuss its planned review of an expected COL application from Duke Energy to build and operate two AP1000 reactors at a site in Cherokee County. (*For information on the AP1000, see above under "Shearon Harris."*)

Summer

On August 28, NRC staff conducted a public meeting in Winnsboro, South Carolina to discuss how the agency will review an expected COL application from South Carolina Electric & Gas to build and operate two AP1000 reactors at the Summer site, located northwest of Columbia. (*For information on the AP1000, see above under "Shearon Harris."*)

Public Input Sought re Vogtle ESP

The U.S. Nuclear Regulatory Commission is seeking public comment on its preliminary conclusion that environmental impacts would not keep the agency from issuing an Early Site Permit (ESP) for the Vogtle site near Waynesboro, Georgia—about 26 miles southeast of Augusta. The preliminary conclusion is contained in NUREG-1872, "Draft Environmental Impact Statement (EIS) for an Early Site Permit at the Vogtle Electric Generating Plant Site." The draft EIS—which was the subject of a public meeting that was held in Waynesboro, Georgia on October 4—is available for public comment until November 28, 2007.

The ESP process allows an applicant to resolve certain safety and environmental issues related to siting prior to submitting an application to build and operate a new nuclear power plant. An ESP denotes a site's suitability for construction and operation of a nuclear plant. Southern Nuclear filed the Vogtle application on August 15, 2006. If approved, the permit would allow Southern Nuclear to reserve the site for up to 20 years. A future application for a construction permit or combined license at the Vogtle site could then reference the ESP.

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

Federal Agencies and Committees *continued*

Written comments on the draft EIS should be submitted either by mail (postmarked by November 28) to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail-stop T-6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or via e-mail (sent no later than November 28) at Vogtle_EIS@nrc.gov.

NRC staff has also issued a Safety Evaluation Report (SER), with open items, for the Vogtle application. Southern must address the open items before the staff can finalize the report.

At the conclusion of the public comment period on November 28, the NRC staff will consider and address the comments provided, then issue a final EIS on the environmental acceptability of an ESP at Vogtle in mid-2008.

The draft EIS, SER and related documents are available on the NRC web site at this address: <http://www.nrc.gov/reactors/new-licensing/esp/vogtle.html>.

Mid-Cycle Letters Issued for Nuclear Plants

In early September, the U.S. Nuclear Regulatory Commission announced that the agency has issued mid-cycle assessment letters to the nation's 104 operating commercial nuclear power plants. The agency's most recent assessments show that all of the plants continue to operate safely.

"We ensure nuclear power plants are safe, inspecting them and rating their performance regularly, as part of our mission to protect people and the environment," said Stuart Richards, Deputy Director of the Division of Inspection and Regional Support in the NRC's Office of Nuclear Reactor Regulation. "The latest round of assessments shows that about 70 percent of the nation's commercial reactors require only the agency's basic level of attention."

If a nuclear power plant's performance declines, the NRC will assign additional resources to ensure that the plant operator is taking the steps necessary to correct the situation. Only one plant, Palo Verde in Arizona, requires the NRC's highest level of attention, which will include additional inspectors this fall to confirm the plant's performance issues are being addressed. Ten plants require significant NRC attention, whereas another 19 plants get some additional attention. These numbers are generally comparable to last year's mid-cycle assessments.

Updated information on plant performance is posted to the NRC web site every quarter. Plants also receive annual assessment letters, with the next ones to be issued in March 2008.

A list of each plant's current performance rating is available on the NRC web site at http://www.nrc.gov/NRR/OVERSIGHT/ASSESS/actionmatrix_summary.html. The assessment letters sent to each licensee are available on the site at <http://www.nrc.gov/NRR/OVERSIGHT/ASSESS/index.html>.

NRC to Require E-Filing in All Agency Hearings

The U.S. Nuclear Regulatory Commission has amended its regulations to require electronic submissions in almost all agency hearings, consistent with the existing rules governing the high-level radioactive waste repository application proceeding. The Commission expects the new rule will allow NRC adjudicatory proceedings to be expedited and the costs reduced. The rule—which became effective on October 15, 2007—applies to new proceedings noticed on or after that date.

Under the new rule, documents in agency adjudications need to be electronically submitted through the agency's Electronic Information Exchange to the E-Submittal system. Exceptions may be made to allow paper filings if parties can show "good cause" not to file electronically.

The new rule builds on developments in the federal courts as well as previous NRC rules and creates a uniform system for electronic submissions. Since 2001, the NRC has encouraged power reactor licensees to submit documents either through an electronic information exchange system or on CD-Rom. In 2003, the NRC issued a final rule that allowed licensees, vendors, applicants and members of the public to submit documents, including Freedom of Information Act requests, in an electronic format. Almost all parties in adjudicatory proceedings currently file by electronic mail, but also must submit paper copies of their filings. This rule eliminates the paper copy requirement.

For more information about the E-Submittal system or to file electronically, go to <http://www.nrc.gov/site-help/e-submittals.html>. The final rule and related documents are available through the NRC's rulemaking web page at <http://ruleforum.llnl.gov>.

(Continued from page 6)

Other Future Meetings

The LLW Forum is currently seeking hosts for the fall 2009 and for both 2010 meetings. 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.

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

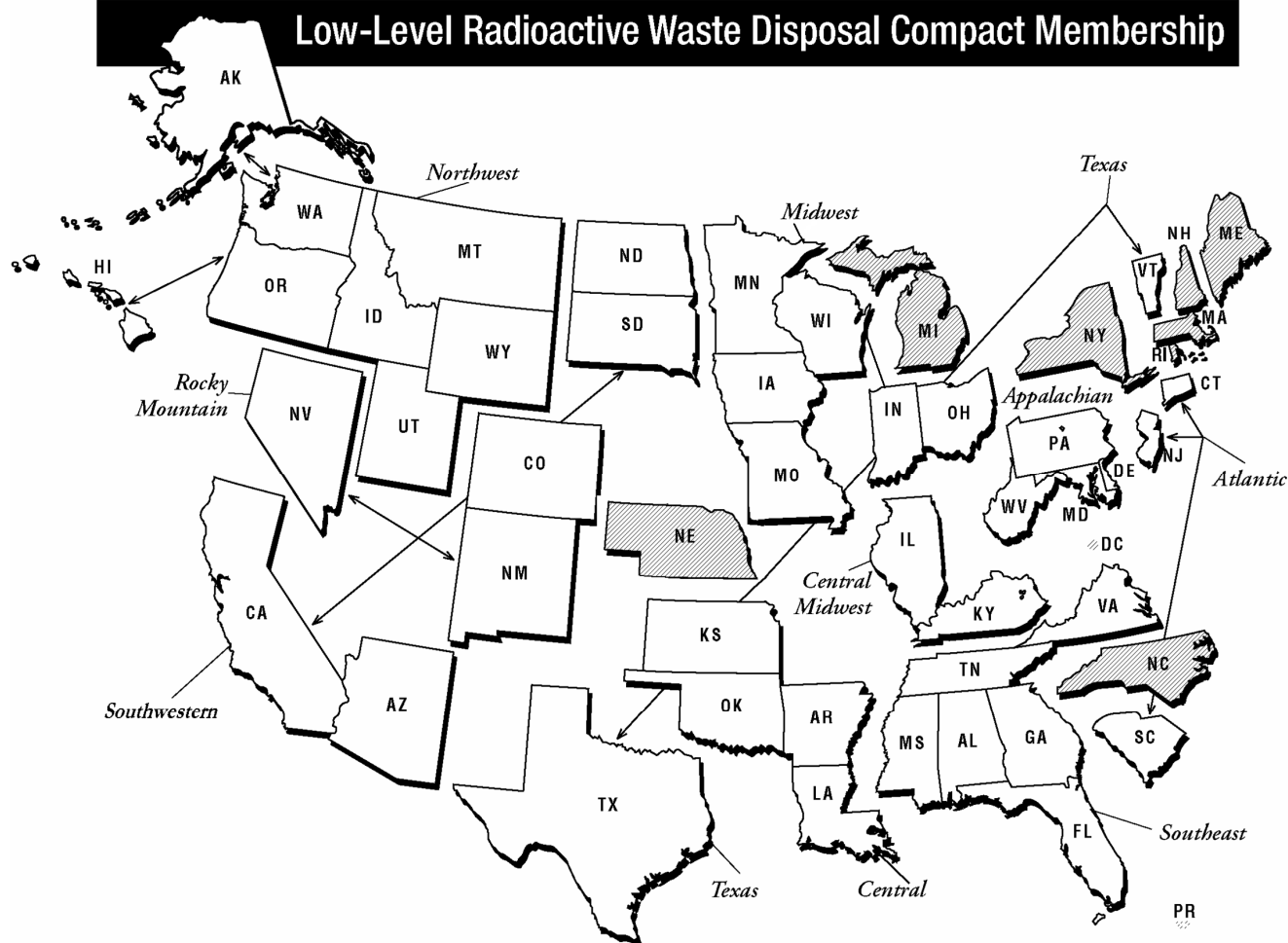
To access a variety of documents through numerous links, visit the web site for the LLW Forum, Inc. at www.llwforum.org

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