LLW notes

Volume 23, Number 4 July/August 2008

***Texas Compact/State of Texas***

# TCEQ Issues Draft LLW Disposal License to WCS

On August 11, 2008, the Texas Commission on Environmental Quality (TCEQ) filed with the Office of the Chief Clerk of the State of Texas a Notice of Draft License and Opportunity for Hearing, Draft License, Draft Licensing Order and Environmental Analysis related to an application from Waste Control Specialists LLC (WCS) for near-surface disposal of low-level radioactive waste at the company's site in Andrews County, Texas.

The chief clerk will issue official notification to WCS and affected landowners & mineral rights owners this week. Upon that notification, the applicant is required to publish a notice in a local newspaper. Upon publication, the public will have 30 days to provide comment and request a hearing. In addition, TCEQ plans to hold a public meeting in Andrews County on September 8, 2008.

WCS had originally submitted the 4,000-page license application (no. RW4100) on August 3, 2004, and had submitted subsequent revisions thereto. (See *LLW Notes*, July/August 2004, pp. 1, 8-10.)

**WCS Response**

In a press release dated August 12, WCS praised the State of Texas for taking a "critical first step" in addressing its low-level radioactive waste disposal needs.

"We are gratified the TCEQ's Executive Director and his staff have issued this draft license and have recommended its issuance to the TCEQ Commissioners," said William J. Lindquist, Chief Executive Officer of WCS. "This is an important milestone for WCS, the people of Andrews and Lea Counties and the states of Texas and Vermont, as members of the Texas Compact … In addition to providing more than 75 new jobs at our Andrews County facility, this license will ensure that Texas and Vermont hospitals, universities, power plants and other enterprises will be able to continue operating with knowledge that there is an assured solution for the permanent disposal of their LLRW. With the support of the Andrews County and Lea County communities and the Permian Basin, WCS is proud to offer a solution."

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**In This Issue**

## COPYRIGHT POLICY

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

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

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

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

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**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.***

# Low-Level Radioactive Waste Forum Meetings
## *2008 and Beyond*

The following information on future meetings of the Low-Level Radioactive Waste Forum is provided for planning purposes only. Please note that the information is subject to change.

*For the most up-to-date information, please see the LLW Forum's web site at www.llwforum.org.*

**Fall 2008 Meeting**

The fall 2008 meeting of the Low-Level Radioactive Waste Forum, which is being sponsored by the Appalachian States Low-Level Radioactive Waste Compact Commission, will be held at the Westin Hotel in Annapolis, Maryland on September 11-12, 2008. (The Executive Committee will meet on Thursday morning, September 11.)

NRC Commissioner Gregory Jaczko and DOE Deputy Assistant Secretary for Compliance Frank Marcinowski will be giving presentations at the meeting. In addition, among other exciting agenda items, we have scheduled four Congressional staffers to participate in a panel session to discuss the current perceptions of Congress on waste management issues and future direction.

*Meeting bulletin and registration forms are available on the LLW Forum's web site at www.llwforum.org. Links to the documents will be located both in the first bold paragraph of the Home Page, as well as under "Meetings" on the About Page.*

**2009 Meetings**

The Atlantic Compact will serve as host of the spring 2009 LLW Forum meeting. The meeting will be held at the Hilton Hotel in Columbia, South Carolina on March 23-24, 2009.

The State of Utah has agreed to host the fall 2009 LLW Forum meeting at a location to be determined near Salt Lake City, Utah. The state is tentatively considering a location in Park City on dates during the latter half of the month of September 2009.

**2010 Meetings**

The State of Texas and Waste Control Specialists LLC have agreed to co-host the spring 2010 meeting in Austin, Texas. A tour of the WCS site in Andrews County will be offered for interested parties.

The State of New York has agreed to host the fall 2010 meeting at a location to be determined within the state.

*Anyone interested in potentially hosting or sponsoring a meeting should contact one of the officers or Todd Lovinger, the organization's Executive Director, at (202) 265-7990.*

***Northwest Compact/State of Utah***

# Energy*Solutions* Clive Facility Reaches Safety Milestone

## *UK Subsidiary Awarded RoSPA Engineering Construction Sector Award*

Energy*Solutions* recently announced that its facility in Clive, Utah has achieved 3-million man hours without an Occupational Safety and Hazardous Act (OSHA) Lost Time Incident. In addition, the company announced that its U.K. subsidiary, Magnox Electric LLC, has been awarded the 2008 Royalty Society for the Prevention of Accidents (RoSPA) Engineering Construction Sector Award.

**Clive Facility's OSHA Milestone**

On August 8, 2008, Energy*Solutions* announced the achievement of a major milestone for employees at the company's disposal facility in Clive, Utah who surpassed 3-million man hours without an OSHA Lost Time incident. In 2007, only 18 companies in the United States achieved 3 million hours without an OSHA Lost Time incident.

"This is an incredible accomplishment for our employees at Clive," said Steve Creamer, CEO and Chairman of Energy*Solutions.* "The credit goes to every employee at the facility for their dedication and commitment to safety. I want to personally congratulate every one of them for this tremendous achievement."

In February 2004, the facility reached the first million hours without a lost time incident. Employees at the facility are required to attend regular safety training courses and are encouraged to report problems and remind each other about working safely. Employees are also required to follow Job Hazard Analyses (JHA) when performing work.

**Magnox Electric's RoSPA Award**

On May 19, 2008, Energy*Solutions* announced that its U.K. subsidiary Magnox Electric LLC has been awarded the 2008 RoSPA Engineering Construction Sector Award. This marks the second year in a row that the company has won this honor recognizing performance across the ten Magnox Reactor sites in the United Kingdom. The award is presented by RoSPA for the most outstanding performance in health and safety by an organization within a particular sector.

"This award goes to all the hard working Magnox Electric employees who take safety seriously both on and off the job," said Energy*Solutions*' CEO and Chairman Steve Creamer who accepted the award on behalf of Magnox Electric's nearly 4,000 employees. "This culture of safety is a standard Energy*Solutions* strives for at all of our world-wide operations. We appreciate RoSPA recognizing Energy*Solutions* as a company dedicated to a safe working environment."

In order to qualify for the RoSPA award, Energy*Solutions* had to demonstrate a robust and high quality safety management system with four years of consistently executing or continuously improving health and safety performance.

Energy*Solutions* offers customers a full range of integrated services and solutions, including nuclear operations, characterization, decommissioning, decontamination, site closure, transportation, nuclear materials management, the safe and secure disposition of nuclear waste, and research and engineering services across the fuel cycle.

*For additional information, please contact Mark Walker at (801) 649-2194 or at mwalker@energysolutions.com.*

# Energy*Solutions* Signs Hanford and TVA Contracts

## *Receives Tax Ruling for Zion*

Energy*Solutions* recently announced that it has been awarded the U.S. Department of Energy's Tank Operations contract at Hanford, Washington, as well as signing a second waste management agreement with the Tennessee Valley Authority (TVA). In addition, the company recently received a favorable Private Letter Ruling from the U.S. Internal Revenue Service (IRS) concerning tax treatment of decommissioning funds related to the company's Zion Nuclear Power Station project.

**Hanford Tank Operations Contract**

Energy*Solutions* is teamed with URS' Washington Division on the Hanford Tank Operations contract. They will operate as Washington River Protection Solutions (WRPS) LLC. Areva is also a dedicated subcontractor on the team.

Under the contract, Energy*Solutions* and its partners will safely maintain 177 large aging underground tanks containing approximately 53 million gallons of residual radioactive and chemical waste that are grouped in 18 farms at the 586 square mile Hanford reservation. In addition, they will begin to conduct final retrieval and transfer of the waste and safe closure of the tanks.

"We are thrilled that the Department of Energy has awarded WRPS the Tank Operations contract," said Energy*Solutions*' CEO and Chairman Steve Creamer. "We look forward to working with the Department and the State of Washington to safely and efficiently manage the liquid waste at the Hanford site. This cleanup project is vital to the protection of the Columbia River and to the health and safety of the residents of the State of Washington."

WRPS expects to begin transition on July 1, 2008 and assume responsibility for tank waste mission activities at Hanford under the new contract starting October 1, 2008.

**TVA Waste Management Agreement**

Under Energy*Solutions*' five-year, $30 million waste management contract with TVA, the company will provide liquid radioactive waste management services to the Sequoyah, Watts Bar and Browns Ferry nuclear power plants. This agreement is separate from a recently signed agreement for overall processing and offsite disposal services for TVA.

"Once again, we appreciate the confidence shown to Energy*Solutions* by the Tennessee Valley Authority by selecting us to safely manage its liquid waste," said Creamer.

The agreement is for on-site processing of TVA's liquid radioactive waste, as well as cask rental and transportation, spent fuel pool cleanout services, and other associated services.

**Zion Decommissioning Tax Ruling**

The favorable IRS Private Letter Ruling received by Energy*Solutions* relates to tax treatment of decommissioning funds for the company's Zion Nuclear Power Station project. The ruling concluded that the structure of the project will allow the company to assume control of decommissioning funds without having to recognize gains or losses at the time of transfer. Energy*Solutions* requested the Private Letter Ruling to confirm that the transfer of assets from Exelon to Energy*Solutions*, including funds that have been set aside to pay for decommissioning activities, would not trigger adverse tax consequences. The ruling confirms that the transfer will not trigger capital gains or other income tax events.

"The IRS ruling represents a significant milestone in the development of our license stewardship strategy," said Creamer. "We are pleased that the Zion decommissioning project continues its orderly progress toward start-up."

In December 2007, Energy*Solutions* signed an agreement with Exelon Corporation to accelerate the decommissioning and environmental restoration of the Zion Nuclear Power Station, which is located in Illinois. The project employs a stewardship strategy whereby Energy*Solutions* will conduct the decommissioning and site restoration work as both owner and licensee of the power station. Prior to commencing decommissioning operations, Energy*Solutions* must receive license transfer approval from the U.S. Nuclear Regulatory Commission. Following completion of the project, the Zion project will be returned to Exelon.

*For additional information, please contact Mark Walker at (801) 649-2194 or at mwalker@energysolutions.com.*

***Northwest Compact/State of Washington***

# American Ecology Announces Record Operating Results

## *Ranked Among Top Small Business*

American Ecology recently announced record operating results for the first half of 2008, as well as new rankings on various lists of growing companies.

**Operating Results**

On July 31, 2008, American Ecology Corporation reported record operating results for the quarter ended June 30, 2008. Operating income for the second quarter of 2008 set a new quarterly record of $9.8 million—a 20% increase over operating income for the second quarter of 2007. The results exceeded record operating income from the first quarter of 2008 of $9.5 million. During the first half of 2008, disposal volumes climbed to 668,000 tons, an increase of 23% over the same period in 2007.

"Very strong clean-up business performance and diversified growth over multiple service lines combined to produce record first half performance," stated Chairman and Chief Executive Officer Stephen Romano.

**Rankings**

In June 2008, Fortune Small Business (FSB) ranked American Ecology 63rd on its annual FSB 100 list of fastest growing small public companies in America. To compile the list, Fortune Small Business enlisted financial research firm Zacks to rank public companies (excluding banks and real estate firms) with revenues less than $200 million and a stock

price of more than $1, based on their percentage growth in earnings, revenue, and total return to investors over the past three years. The eighth annual list appears in the July/August issue of Fortune Small Business.

"We are pleased to be recognized by Fortune for our sustained financial performance," said Romano, "including an annualized three year total return of 27.1%, that ranks us among the top small public companies in the United States."

American Ecology was also recently ranked 12th on Business Week's annual list of "Hot Growth" companies and third on the Seattle Times' "Northwest 100" annual ranking of the best performing public companies headquartered in Washington, Oregon and Idaho. The Business Week list—which was published in the June 9, 2008 issue—analyzed 10,000 publicly traded companies (excluding banks, insurers, real estate investment trusts and utilities). The Seattle Times list rates companies using a weighted formula that combines four performance metrics—return on equity, operating income growth, sales per employee and stock-price appreciation—to create a single score. It was published in the June 8, 2008 issue.

**Background**

American Ecology, through its subsidiaries, provides radioactive, PCB, hazardous, and non-hazardous waste services to commercial and government customers throughout the United States, such as steel mills, medical and academic institutions, refineries, chemical manufacturing facilities and the nuclear power industry. Headquartered in Boise, Idaho, American Ecology is the oldest radioactive and hazardous waste services company in the United States.

*To view information on American Ecology's Fortune Small Business ranking, please go to http://money.cnn.com/magazines/fsb/fsb100/20008/snapshots/63.html.*

***Southeast Compact Commission***

# Southeast Compact Calls for National Policy re Ionizing Radiation Including Management of Radioactive Waste

On June 27, 2008, the Southeast Compact Commission for Low-Level Radioactive Waste Management adopted a Policy Statement concerning controls over ionizing radiation, including the management of radioactive waste. The statement argues that the current system of controls over ionizing radiation is "inconsistent" and that a "unified vision" is needed. It recommends that the U.S. Congress promulgate legislation "establishing a national policy in regard to ionizing radiation, including the management of radioactive waste."

The Policy Statement, as adopted, reads in its entirety as follows:

*The Southeast Compact Commission finds that the current system of controls over ionizing radiation in the United States is inconsistent and fragmented, in that it does not regulate all sources of ionizing radiation. While most states operate a radiation control agency, not all states regulate all sources of ionizing radiation in the same manner, nor is there a national ionizing radiation policy. Some sources are not regulated in some states. Further, in some exclusive federal jurisdictions some sources are not regulated at all, as there is no national program for the regulation of radiation sources.*

*The same is true for the management of radioactive waste in the United States. The existing system is a patchwork quilt of inconsistent regulations and practices.*

*The Commission believes that the nation is lacking a unified vision for an optimal system for the control of ionizing radiation including the management of radioactive wastes. Consequently, little gets done.*

*With the leadership of President John F. Kennedy, the United States established a national policy to put a man on the moon. That policy statement established a vision such that combined efforts of all were devoted to making that vision a reality. The national policy became a mission statement and a common goal that all Americans could support and work towards in a unified effort. The Southeast Compact Commission believes such a common goal is needed with regard to managing ionizing radiation in the United States—we need a unified vision of the optimal system for the control of ionizing radiation, including the management of radioactive wastes.*

*Therefore, the Commission recommends that the United States Congress promulgate legislation establishing a national policy in regard to ionizing radiation, including the management of radioactive waste. Such legislation should establish a common goal that users and regulators could support and work towards and would designate a plan of action and responsibility for achieving the goal.*

The Southeast Compact was enacted by its party states in 1983 and ratified by Congress in 1985. Party states currently include Alabama, Florida, Georgia, Mississippi, Tennessee, and Virginia.

The mission of the Southeast Compact Commission is "to ensure that adequate, reliable, and appropriate services are available, now and in the foreseeable future, such that low-level radioactive waste generated in the Southeast Region can be safely managed in an efficient, equitable, economical, and environmentally responsible manner in order that each party state may meet its responsibility for providing for the availability of capacity either within or outside the State for disposal of low-level radioactive waste generated within its borders (Article 1, PL 99-240)."

*For additional information, please contact Kathryn Haynes, Executive Director of the Southeast Compact Commission, at (919) 821-0500.*

# Susan Jablonski Receives 2009 Hodes Award

The Southeast Compact Commission for Low-Level Radioactive Waste Management has selected Susan Jablonski of the Texas Commission on Environmental Quality (TCEQ) as its recipient for the 2009 Richard S. Hodes, M.D. Honor Lecture Award—a program that recognizes an individual, company, or organization that contributed in a significant way to improving the technology, policy, or practices of low-level radioactive waste management in the United States.

Jablonski, who currently serves as the Director of TCEQ's Radioactive Materials Division, manages Texas' regulatory programs for the disposal of commercial radioactive material, source material (uranium) recovery, and commercial radioactive waste storage and processing. She has extensive experience working with environmental and radiological monitoring, radiochemistry, environmental engineering, waste characterization, and the management and disposal of radioactive material. She previously served as the Director of Health Physics of the Texas Low-Level Radioactive Waste Disposal Authority until transferring to the TCEQ as a technical expert on radioactive waste management disposal matters.

As the award recipient, Jablonski will present a lecture during the Waste Management '09 Symposium in Phoenix, Arizona. The symposium is sponsored by the University of Arizona and will be held from March 1 – 5, 2009. A special time is reserved during the Symposium for the lecture and the award presentation.

**Award Background**

Dr. Richard S. Hodes was a distinguished statesman and a lifetime scholar. He was one of the negotiators of the Southeast Compact law, in itself an innovative approach to public policy in waste management. He then served as the chair of the Southeast Compact Commission for Low-Level

Radioactive Waste Management from its inception in 1983 until his death in 2002. Throughout his career, Dr. Hodes developed and supported innovation in medicine, law, public policy, and technology.

The Richard S. Hodes, M.D. Honor Lecture Award was established in 2003 to honor the memory of Dr. Hodes and his achievements in the field of low-level radioactive waste management. It is awarded to an individual, company, or organization that contributed in a significant way to improving the technology, policy, or practices of low-level radioactive waste management in the United States.

**Past Recipients**

In 2004, the Southeast Compact Commission chose W.H. "Bud" Arrowsmith as the winner of the first Richard S. Hodes, M.D. Honor Lecture Award. The Texas A & M University Student Chapter of Advocates for Responsible Disposal in Texas (ARDT) was also chosen in 2004 for special recognition as an Honorable Mention for its innovation in educational activities related to low-level radioactive waste management. William Dornsife of Waste Control Specialists, LLC was chosen as the second Richard S. Hodes, M.D. Honor Lecture Award recipient in 2005 and the California Radioactive Materials Management Forum (CalRad Forum) received the award in 2006. In 2007, Perma-Fix Environmental Services Chief Operating Officer Larry McNamara was chosen to receive the award and Michael Ryan of the U.S. Nuclear Regulatory Commission's Advisory Committee on Nuclear Waste and Materials (ACNW&M) won the award in 2008.

*For additional information, please contact Ted Buckner of the Southeast Compact Commission at (919) 821-0500 or tedb@secompact.org or visit the Southeast Compact Commission's website at http://www.secompact.org/.*

***(Continued from page 1)***

Lindquist went on to comment about the significance of the draft license given the recent closure of the Barnwell facility to out-of-region waste and the limitations of Energy*Solutions'* Clive facility, which is not authorized to dispose of Class B and C low-level radioactive waste. He also expressed his hope that pursuit of the license by WCS will allow hospital and university officials to continue their efforts in the diagnosis, treatment and research of cancer and other life threatening diseases, as well as assist Texas and the country in their "quest for energy independence."

**Background**

On December 29, 2003, TCEQ filed a notice with the Secretary of State announcing the agency's intention to accept applications from interested parties to license a low-level radioactive waste disposal facility in the state. Pursuant to the notice, applications for near surface land disposal of low-level radioactive waste were accepted for a 30-day period from July 8 through August 6, 2004.

TCEQ filed the notice in accordance with legislation (H.B. 1567) passed in the summer of 2003 that amends Texas Health and Safety Code provisions dealing with the siting and operation of a commercial low-level radioactive waste disposal facility for the Texas Low-Level Radioactive Waste Disposal Compact. The legislation, as approved, allows for the creation of two privately run waste disposal facilities to be licensed as one site by the TCEQ. One facility may dispose of federal facility waste, as defined under the Low-Level Radioactive Waste Policy Act of 1980 and its 1985 amendments, subject to certain specified conditions. The other, adjacent facility, may dispose of commercial low-level radioactive waste. (See *LLW Notes*, March/April 2003, p. 1.)

WCS filed a license application—accompanied by a $500,000 license application fee—on August 3, 2004. Thereafter, there were three rounds of administrative notice of deficiencies that spanned 225 days, as built into the statutory timeline for

license review. On February 18, 2005, TCEQ issued a Notice of Administrative Completeness. (See *LLW Notes*, March/April 2005, p. 7.)

TCEQ then issued two notices of technical deficiencies to WCS—dated September 16, 2005 and January 30, 2006—and notified the company in June 2006 about additional unresolved deficiencies. WCS requested, and was subsequently granted, an extension to respond to the noted concerns. On May 1, 2007, TCEQ formally accepted the final response to its noted technical deficiencies from WCS, as well as a revised application. (See *LLW Notes*, March/April 2007, pp. 14-18.)

On December 10, 2007, TCEQ sent an initial draft license and draft licensing order to WCS for review and comment that included pre-construction, construction, operational, and maintenance requirements that may differ or expand upon information provided in the application, as well as conditions that must be met before a final license can be issued. (See *LLW Notes*, January/February 2008, pp. 1, 9-11.)

WCS, which is a wholly-owned subsidiary of Valhi, Inc., currently holds licenses from the state and federal government for the processing, storage and disposal of a broad range of hazardous and toxic waste, byproduct material and certain types of low-level and mixed low-level radioactive waste.

*For additional information, please contact Susan Jablonski of the TCEQ at (512) 239-6466 or Rickey Dailey of WCS at (512) 708-8655. You may also go to the TCEQ's web site at http://www.tceq.state.tx.us/nav/permits/rw.html.*

# WCS Awards Construction Contract

Waste Control Specialists LLC recently announced the award of a three-year, $80 million contract to San-Francisco-based engineering and construction firm URS to lead the design and construction of new permanent disposal facilities and infrastructure improvements at the company's facility in Andrews County, Texas.

The contract includes the following three separate elements:

- the addition of a railroad loop and facilities for hazardous waste from railroad cars,
- the construction of a disposal landfill for radioactive byproduct material, and
- the construction of a disposal landfill for low-level radioactive waste upon approval of a pending license application.

According to WCS press release, URS has been involved in the licensing process and is familiar with the site. "URS used that knowledge in a competitive bidding process," said WCS President Rodney Baltzer.

WCS plans to begin construction on the rail facilities and radioactive byproduct material disposal facility immediately. Construction will not begin on the low-level radioactive waste disposal facility until and unless the company is granted a license from the TCEQ.

**Background**

WCS was recently granted a license for the disposal of radioactive byproduct material from the Texas Commission on Environmental Quality. That license—which was issued on May 21, 2008—will allow WCS to dispose of approximately 3,700 canisters of cold-war era waste from cleanup of the Fernald site in Ohio which WCS is presently storing pursuant to a contract it won from a U.S. Department of Energy contractor in April 2005.

(See *LLW Notes*, May/June 2008, pp. 16-18.) The Lone Star Chapter of the Sierra Club filed a legal challenge to the license in the 201st judicial district court of the state of Texas in late June 2008. (See related story, this issue.) That lawsuit remains pending.

WCS also has an application pending before TCEQ for near-surface disposal of low-level radioactive waste. On December 10, 2007, TCEQ provided for WCS review and comment an initial draft license and draft licensing Order including pre-construction, construction, operational, and maintenance requirements that may differ or expand upon information provided in the application. (See *LLW Notes*, January/February 2008, pp. 1, 9-11.) WCS has submitted comments thereon.

On August 11, 2008, TCEQ issued WCS a Draft License and Draft Licensing Order in regard to the low-level waste disposal application. (See related story, this issue.)

*For additional information, please contact Rick Dailey of Waste Control Specialists at (512) 708-8655 or go to www.wcstexas.com.*

# TCEQ Posts Documents re Radioactive Material Legislation

The Texas Commission on Environmental Quality (TCEQ) has posted documentation for the rulemaking on SB 1604 and HB 3838 on the agency's web site for review. The rulemaking will implement the remaining provisions of legislation for radioactive waste management and source material recovery (uranium mining). It is scheduled for the Commissioner's Agenda on August 6, 2008.

Of particular interest to LLW Forum members is TCEQ's consideration of disposal rate setting for low-level radioactive waste and related disposal fee assessment and collection.

**Background**

To date, TCEQ has hosted two stakeholder meetings in order to provide information to the public and solicit comments on rule changes to implement the remaining provisions of SB 1604 and HB 3838. A meeting on proposed phase I rule changes was held on February 15, 2008. (See *LLW Notes*, January/February 2008, pp. 12-13.) A meeting on proposed phase II rule changes was held on April 25, 2008. (See *LLW Notes*, May/June 2008, pp. 18-19.)

**SB 1604** SB 1604 concerns the transfer of certain regulatory responsibilities for radioactive waste management licensing from the Texas Department of State Health Services (DSHS) to the TCEQ. (See *LLW Notes*, May/June 2007, pp. 9-10.) Prior to its enactment, TCEQ had jurisdiction to regulate and license the disposal of radioactive substances except for by-product material. SB 1604, however, provides that TCEQ will also have jurisdiction to regulate and license:

- the processing or storage of low-level radioactive waste or naturally occurring

radioactive material (NORM) waste received from other persons, except oil and gas NORM;

- the recovery or processing of source material;
- the processing of by-product material; and,
- sites for the disposal of radioactive waste, by-product material or NORM waste.

In addition, SB 1604 provides that TCEQ by rule may exempt a source of radiation or a kind of use or user that is under its jurisdiction from the statutory licensing or registration requirements if it determines that the exemption will not constitute a significant risk to the public health and safety and the environment.

**HB 3838** HB 3838 relates to the regulation of injection wells used for in situ uranium mining by the TCEQ. The legislation expands the TCEQ's jurisdiction to include wells used in the development of information that TCEQ requires for area permit applications. It clarifies that TCEQ has exclusive jurisdiction over wells used to provide geologic, hydrologic and water quality information in support of the development of mining permit applications. The bill requires that these wells be registered with TCEQ unless they are later included in a production area permit, at which point the wells become subject to applicable area permit provisions, including notice and hearing requirements.

HB 3838 further requires that a person developing an application for an area permit for in situ uranium mining within a groundwater conservation district shall provide certain, specified information to the district. And, it clarifies TCEQ authority for right of entry inspection and investigation to include production and monitoring wells as defined and any business or operating records required to be maintained for such wells.

Finally, HB 3838 expands the TCEQ's discretion to require financial assurance to ensure proper closure of wells regulated under Water Code Chapter 27 by making such assurance mandatory for any person issued a permit for any well used for in situ uranium mining.

**Projected Schedule**

According to TCEQ's projected schedule, it is expected that proposed rule changes would be published in the *Texas Register* on or about August 22, with a 30-day comment period to follow thereafter. A public hearing is tentatively scheduled for September 16, 2008.

TCEQ projects that adopted rules would be placed on the Commissioners Agenda on or about December 10, 2008 and would be published in the *Texas Register* on or about December 26, 2008. The anticipated effective date of the revised rules is January 4, 2009.

*Documentation for the rulemaking on SB 1604 and HB 3838—including the preamble, rule language for each chapter, and the executive summary—can be found at http://www.tceq.state.tx.us/rules/pendprop.html. You may also contact the Radioactive Materials Division at radmat@tceq.state.tx.us or at (512) 239-6466.*

# Texas Hosts Stakeholder Meeting re LLW Disposal Fees

At a meeting on August 6, 2008, Commissioners from the Texas Commission on Environmental Quality (TCEQ) determined to continue the rulemaking for phase 2 of implementation of SB 1604 and HB 3838 in order to allow more discussion on the draft new Subchapter N in Chapter 336 which will establish fees for low-level radioactive waste disposal. (See related story, this issue.) The draft new Subchapter N includes commission powers, factors considered for maximum disposal rates, initial determination of rates and fees, revisions to maximum disposal rates, extraordinary volume adjustments, hearings on maximum disposal rate disputes, revenue statements, and contracted disposal rates.

Accordingly, TCEQ hosted a stakeholder meeting on Friday, August 15, 2008. The purpose of the meeting was to give the regulated community and the public an opportunity to provide input on the draft 30 TAC Chapter 336, Subchapter N rules pertaining to rate fees.

*The draft rule (including information pertaining to fee setting) may be found at http://www.tceq.state.tx.us/assets/public/legal/rules/rule_lib/proposals/07029336_pro.pdf. For additional information, please contact Ms. Beryl Thatcher at*

# TCEQ Executive Director Appointed

On June 4, 2008, the Texas Commission on Environmental Quality (TCEQ) unanimously voted to appoint Mark Vickery as the agency's Executive Director, effective June 17, 2008. Vickery—who has served as the agency's Deputy Executive Director since May 1, 2004—succeeds Glenn Shankle, who recently announced his retirement from state government.

"Mark Vickery's depth of knowledge and extensive experience with the TCEQ made him the ideal candidate for this position," said TCEQ Chairman Buddy Garcia. "Mark started his career here at this agency, rose through the ranks, understands the challenges and issues ahead, and is unquestionably qualified to serve as Executive Director," added Commissioner Larry Soward.

Vickery began his career in state government 21 years ago as an enforcement coordinator with the Texas Water Commission—a predecessor of the TCEQ. His work includes experience in all areas of the agency including industrial and hazardous waste enforcement, municipal solid waste compliance and enforcement, waste tires, and as Director of Field Operations which included supervising more than 800 employees in 16 regional offices across Texas. Vickery also previously served as Deputy Director for the Office of Permitting, Remediation and Registration, as well as for the Office of Compliance and Enforcement. As the agency's Deputy Executive Director, Vickery served as the agency's Chief Operating Officer and provided oversight of the day-to-day operations of more than 2,900 employees and an annual operating budget in excess of $564 million.

"I fully understand the tremendous responsibility that has been bestowed upon me," said Vickery in regard to his appointment. "I will continue to look

for ways to improve the effectiveness of the TCEQ as we work to protect our state's precious natural resources. I also remain committed to investing in this agency's talented and dedicated employees who believe in our mission of environmental protection."

## Coalition to Promote Nuclear Energy Launched in Texas

On June 3, 2008, business, academic and state leaders announced the formation of *Nuclear Energy for Texans (NET)*—a new coalition dedicated to raising awareness about the benefits of nuclear energy as a clean, safe, reliable alternative to meeting the increasing energy needs of the state.

"Texas is expecting a surge in electricity demand over the next 20 years as our population continues to expand," said NET President Tom Forbes. "We must have an energy mix in place that allows Texas to stay competitive as the need for power is expected to grow 48 percent by 2030. NET believes nuclear energy must be a part of that mix as we move into the 21st century."

NET plans to work to raise visibility on the issue of nuclear energy through research, a coordinated public information campaign, speaking engagements and public participation events. The coalition is led by a steering committee composed of state and local elected officials, representatives of business and industry, academics and the scientific and engineering community.

NET is committed "to preserving Texas' clean air through a diverse energy platform that includes nuclear energy." They point to the state's two nuclear power plants—South Texas Project and Comanche Peak—as examples of safe, steady producers of inexpensive electricity for two decades. The plants, according to NET, have helped Texas avoid the emission of 70,700 tons of sulfur dioxide, 19,500 tons of nitrogen oxide and 28.8 metric tons of carbon dioxide in 2005.

The largest nuclear operator in the United States, Exelon Nuclear, is sponsoring NET and providing initial funding for the coalition. Other NET members will contribute financial support as well.

*For additional information about NET, please go to www.nuclearenergyfortexans.org.*

***U.S. Congress***

# NGNP Licensing Strategy Report Delivered to Congress

On August 15, the U.S. Nuclear Regulatory Commission and the U.S. Department of Energy delivered to Congress the Next Generation Nuclear Plant (NGNP) Licensing Strategy Report. The NGNP supports President Bush's Advanced Energy Initiative, which advocates new investments and nuclear power policies to increase our nation's energy security.

The Energy Policy Act of 2005 directed NRC and DOE to jointly develop a strategy for licensing the NGNP demonstration plant. The report to Congress notes that current NRC regulations for light-water reactors need to be adapted for the advanced non-light-water reactor designs that DOE is considering under the NGNP initiative. The report describes the analytical tools, research and development activities and estimated resources necessary to complete an NRC licensing review. NRC hopes to complete the review by 2017, which would allow DOE to build and begin operating the plant by 2021. The report also outlines DOE's conclusion that the NGNP would be a very high-temperature gas-cooled reactor that could produce electricity, as well as process heat and hydrogen.

"The NRC's new reactor licensing process is currently focused on light-water reactors, and the staff is confident this basic framework can also support an NGNP review," said NRC Chairman Dale Klein. "We will work with DOE to supplement that framework with NGNP-specific items."

"DOE is committed to the development and the commercial deployment of NGNP technology in a timely manner," said DOE Assistant Secretary for Nuclear Energy Dennis Spurgeon. "Nuclear energy is vital to our nation's energy security and the NGNP has the potential to extend the benefits to bring nuclear technology to a whole new sector of the U.S. economy."

*The joint Licensing Strategy Report will be available on the DOE's Office of Nuclear Energy web site at http://www.nuclear.gov.*

# Annual Security Inspection Report to Congress Published

In early July 2008, the U.S. Nuclear Regulatory Commission made publicly available the unclassified version of an annual report to Congress outlining the previous year's security inspection program. The report—which is required by 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 2007.

In 2007, NRC conducted 199 security inspections at commercial power reactors, of which 22 were force-on-force inspections. These force-on-force inspections use a well-trained mock adversary force to test the ability of a facility to respond to the level of threat the facility is required to defend against. The Safeguards Information version of the report includes a discussion of the results of the security inspections conducted at Category I fuel cycle facilities.

The 199 security inspections conducted by NRC in 2007 yielded 122 findings, of which 117 were of very low security significance and five were of low to moderate security significance. Under the security inspection program, licensees are expected to promptly fix or put compensatory measures in place if any potentially significant deficiencies are identified in the protective strategy of a plant.

"The NRC is committed to protecting the public health and safety, promoting the common defense and security, and protecting the environment. Conducting force-on-force exercises and implementing the security inspection program are just two of a number of regulatory oversight activities the NRC performs to ensure the secure use and management of radioactive materials by the commercial nuclear industry," said NRC Chairman Dale E. Klein.

*The report can be found on the NRC web site at http://www.nrc.gov/reading-rm/doc-collections/congress-docs/correspondence/2008/.*

### *EnergySolutions v. Northwest Interstate Compact on Low-Level Radioactive Waste Management*

# Scheduling Order Set in Suit Challenging NW Compact's Authority

On July 12, 2008, the U.S. District Court for the District of Utah, Central Division, filed a scheduling order in a lawsuit filed by Energy*Solutions* against the Northwest Interstate Compact on Low-Level Radioactive Waste Management and against Michael Garner solely in his official capacity as Executive Director of the Northwest Compact.

The action—which was initiated on May 5, 2008—seeks, among other things, a declaratory judgment "to clarify the authority of the Northwest Compact to govern Energy*Solutions*' privately owned, commercial, low-level radioactive disposal site in Clive, Utah." (See *LLW Notes*, May/June 2008, pp. 25-28.)

**Background**

The action arises out of a proposal from Energy*Solutions* to import up to 20,000 tons of potentially radioactively contaminated material from Italy and to export for return to generators in Italy any of the imported waste that can not be recycled or does not meet the Clive facility's waste acceptance criteria for disposal. (See *LLW Notes*, November/December 2007, pp. 6-9.) Under the proposal, the contaminated material would be processed at Energy*Solutions*' Bear Creek facility for recycling and beneficial reuse with any resultant waste being disposed at the Clive facility. Energy*Solutions* estimates that approximately 1,600 tons of the imported material would be disposed as Class A LLRW at the Clive facility.

The Northwest Compact heard from both proponents and critics of Energy*Solutions*' proposal during a meeting on May 8, 2008. Following a closed-door session, they voted unanimously that the compact's Third Amended Resolution and Order—which authorizes access for LLRW to the Clive facility subject to the provisions of the company's license from the State of Utah—does not address foreign LLRW and that an arrangement would need to be adopted prior to such waste being provided access to the region for disposal at the Clive Facility. (See *LLW Notes*, May/June 2008, pp. 1, 7-9.)

Three days prior to the meeting, on May 5, 2008, Energy*Solutions* filed a lawsuit challenging the Northwest Compact's authority over the Clive facility. (See *LLW Notes*, May/June 2008, pp. 25-28.) Among other things, Energy*Solutions* argues that (1) the Clive facility is not a "regional disposal facility" as defined by the LLRWPA and the Northwest Compact therefore lacks authority to restrict the flow of LLRW to the facility; (2) NRC's authority and responsibility for the regulation of the export and import of byproducts and nuclear materials preempt any attempt by the Northwest Compact to restrict or prevent the importation of foreign waste to the Clive facility; and, (3) any effort by the Northwest Compact to restrict or prohibit the Clive facility from receiving foreign LLRW would amount to unauthorized discrimination against foreign commerce and would be prohibited by the dormant Commerce Clause of the U.S. Constitution.

**Scheduling Order**

The scheduling order addresses preliminary matters, discovery limitations, amendment of pleadings and the addition of parties, reports from experts, other deadlines, settlement and/or alternative dispute resolution, preparation for trial, and trial.

Under the order, the last day to file a motion to amend the pleadings or add parties is August 29, 2008. Experts and the subject of their testimony must be disclosed no later than December 2, 2008. Fact discovery is to be completed by December 31, 2008. Expert discovery is to be completed by February 27, 2009. The deadline for filing dispositive or potentially dispositive motions is March 30, 2009.

Although the case has not been referred to court-annexed mediation or arbitration, it will be evaluated for settlement on February 27, 2009. Pre-trial conferences are to be completed on September 14, 2009.

A five-day bench trial has been scheduled to begin on September 28, 2009.

*For additional information, please contact Tye Rogers, Vice President of Compliance and Permitting at EnergySolutions, at (801) 649-2000, or Michael Garner, Executive Director of the Northwest Compact, at (360) 407-7102.*

### *Lone Star Chapter of the Sierra Club v. Texas Commission on Environmental Quality*

# Sierra Club Sues TCEQ re WCS Byproduct License

In late June 2008, the Lone Star Chapter of the Sierra Club filed suit in the 201st judicial district court of the State of Texas challenging the issuance of a license to Waste Control Specialists LLC (WCS) to dispose of radioactive byproduct material at the company's facility in Andrews County, Texas. (See *LLW Notes*, May/June 2008, pp. 16-18.) In particular, the lawsuit seeks to reverse TCEQ's decision granting WCS' application and force the Texas Commission on Environmental Quality (TCEQ)—which issued the license on May 21, 2008—to grant a "contested case" hearing to the Sierra Club. TCEQ had previously denied the petitioners' request for such a hearing after consideration of applicable law on hearing requests. (See *LLW Notes*, March/April 2008, pp. 12-14.)

Among the material to be disposed is approximately 3,700 canisters of cold-war era waste from cleanup of the Fernald site in Ohio which WCS is presently storing pursuant to a contract it won from a U.S. Department of Energy contractor in April 2005. It will take approximately six months of construction, however, before WCS is ready to begin disposing of any byproduct material pursuant to the license.

WCS also has an application pending before TCEQ for near-surface disposal of low-level radioactive waste. On December 10, 2007, TCEQ provided for WCS review and comment an initial draft license and draft licensing Order including pre-construction, construction, operational, and maintenance requirements that may differ or expand upon information provided in the application. (See *LLW Notes*, January/February 2008, pp. 1, 9-11.) WCS has submitted comments thereon and TCEQ has issued a draft license. (See related story, this issue.)

### *The Issues*

The Lone Star Chapter of the Sierra Club argues that there are several problems with the license application for the disposal of radioactive byproduct material that have yet to be resolved including, among other things, that WCS has failed to:

- adequately characterize the underground geology of the site;
- model for severe weather events, including high winds;

- consider the potential for radioactive traffic accidents;
- look at surface water run-off; and,
- perform the required one-year pre-operation monitoring at the facility.

They also argue that many residents of Eunice—which is located approximately six miles from the site—do not believe that the license conditions will protect them from windblown radioactive debris, potential traffic accidents and the possibility of leakage into the underlying aquifer.

Accordingly, the petitioners are seeking to force TCEQ to hold a contested case hearing on the license to address such issues.

**Background**

**General Information** By-product material is defined as the tailings or wastes produced by or resulting from the extraction or concentration of uranium or thorium from ore processed primarily for its source material content. In its application, WCS proposed to locate a by-product disposal facility approximately 31 miles west of the city of Andrews, just east of the Texas-New Mexico boundary and one mile north of Texas State Highway 176. The WCS facility is currently licensed by the TCEQ for the processing, storage and disposal of a broad range of hazardous waste, as well as for the storage and processing of certain types of low-level and mixed low-level radioactive waste.

**Application Review and Draft Documents** Review of the WCS application was initiated by the Texas Department of Health in June 2004 and then subsequently transferred to the TCEQ. The agency completed its technical review of WCS' application and prepared supporting documentation—including a draft Environmental Analysis (EA) and a draft license—on October 22, 2007. (See *LLW Notes*, September/October 2007, pp. 1, 11-12.) The draft EA is a technical assessment of the Executive Director's staff review of the license application. It documents the review performed through the technical review period and discusses the review and analysis of technical issues in several critical areas that were subsequently addressed in draft license conditions.

**Response to Comments** The comment period on the draft EA and the draft license issued by TCEQ ended on November 27, 2007. TCEQ received comments from various individuals, municipalities, organizations and associations, environmental and other groups, and WCS itself. In addition to the comments, TCEQ received approximately twelve requests for a public meeting— submitted by eleven individuals residing in or around Eunice using an identical form letter, as well as the Lone Star Chapter of the Sierra Club—none of which were submitted from or on behalf of individuals residing in Texas. TCEQ's Executive Director recommended that TCEQ Commissioners deny the hearing requests and grant the license.

**The Decision** On May 21, 2008, TCEQ issued the byproduct disposal license to WCS. In so doing, three TCEQ Commissioners voted two to one in favor of a motion to deny the requests for a hearing and approve the license. Commissioner Larry Soward voted against the motion, noting that he wanted the Commissioners to grant the contested case hearing to address media reports that inferred and outright stated that the agency was "somehow suppressing" a full review of the site's viability.

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

*For additional information, please contact Susan Jablonski, Director of the TCEQ's Radioactive Materials Division, at (512) 239-6731, or Rodney Baltzer, President of WCS, at (972) 450-4235.*

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

# State Will Not Appeal Hanford Initiative Decision

The State of Washington has decided not to ask the U.S. Supreme Court to review a lower court's decision to strike down the Washington State Cleanup Priority Act, allowing the August 19 deadline for filing an appeal to pass without any action by the state. The voter initiative—which sought to bar the U.S. Department of Energy from sending any additional waste to the Hanford nuclear reservation until the department cleans up the facility—was approved in 2004 but never enacted into law after being struck down by lower courts as unconstitutional. Among other problems, the courts ruled that the initiative attempted to override federal authority to regulate radioactive waste.

**Background**

By a margin of roughly 2 to 1, voters in the State of Washington on November 2, 2004 overwhelmingly approved an initiative to require DOE to clean up the Hanford nuclear reservation before it sends any additional waste to the facility. In addition, I-297 also seeks to prevent the disposal of waste in unlined trenches. (See *LLW Notes*, January/February 2004, p. 7.) The initiative was sponsored by Heart of America Northwest and received endorsements from environmental groups, the state Democratic Party and the League of Women Voters.

Radioactive waste is currently retrievably stored at Hanford. The State of Washington and the federal government have entered into an agreement on a long-term schedule for cleanup of the site. In addition, the federal government has shipped small quantities of radioactive waste from two other federal sites to Hanford for packaging before sending it on to the Waste Isolation Pilot Plant (WIPP) in New Mexico.

**The Lawsuit**

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

Federal attorneys argue that the initiative should be invalidated on various grounds including that (1) it pre-empts the federal government's nuclear waste and interstate commerce policies and (2) imposes an illegal tax on the federal government. On July 28, 2005, the Washington State Supreme Court answered certified questions of state law for the district court pertaining to the CPA. (See *LLW Notes*, July/August 2005, pp. 14 - 17.) In particular, the state court provided certified answers to five questions on how the act should be interpreted. It is important to note that while the state court answered questions regarding interpretation of the initiative, however, the court did not rule on the constitutionality of the initiative or parts thereof. Instead, the case was returned to the federal district court, which then applied the state court's certified answers in adjudicating the case.

**The District Court's Ruling**

On June 12, 2006, the U.S. District Court for the Eastern District of Washington struck down the CPA as unconstitutional after finding that it violates the federal government's authority over nuclear waste and interstate commerce. The court held,

among other things, that the initiative is preempted by the Atomic Energy Act (AEA) and violates sovereign immunity and the Supremacy Clause of the U.S. Constitution. In addition, the court found that specific sections of the CPA violate the dormant Commerce Clause, the deliberative process privilege, and the Resource and Conservation Recovery Act (RCRA) waiver of immunity to the United States. Moreover, the court ruled that the initiative is facially invalid and cannot be applied constitutionally in any circumstances—i.e., severability is not an issue. (See *LLW Notes*, May/June 2006, pp. 1, 11 – 12.)

On July 12, 2006, the Washington Department of Ecology filed an appeal with the U.S. Court of Appeals for the Ninth Circuit in San Francisco challenging a lower court's decision. "We respectfully disagree with the federal district court's conclusion that Initiative 297 is unconstitutional and we are not content to let this decision rest with a single district court judge," wrote Attorney General Rob McKenna in a press release. McKenna's office had argued that the initiative is valid because the state has authority to regulate mixed wastes. The state also argued that the federal government could not strike down a law without first seeing how it would be applied. (See *LLW Notes*, July/August 2006, pp. 12 – 13.)

**The Appellate Court's Ruling**

**The Issues** In framing the discussion, the appellate court identified the issues before it as follows:

"Generally speaking, 'mixed waste' is waste that has both a nonradioactive hazardous component and a radioactive component. Unquestionably, the State has the authority to regulate nonradioactive hazardous materials, and does so primarily through the RCRA and the HWMA. The parties also agree that the regulation of pure radionuclides is governed by the AEA. The question we address here is whether the regulation of the radioactive component of mixed waste is preempted by the AEA."

**Preemption** In determining whether the CPA is preempted by the AEA, "the test … is whether 'the matter on which the state asserts the right to act is in any way regulated by the federal government.'" According to the court, "the AEA preempts the CPA if (1) the purpose of the CPA is to regulate against radiation hazards, or (2) if the CPA directly affects decisions concerning radiological safety." The court concluded that the CPA is preempted on both grounds.

*The CPA's Purpose is to Regulate Radioactive Materials* The appellate court held that the text of the CPA itself makes it abundantly clear that it is intended to regulate both nonradioactive hazardous substances and radioactive hazardous substances in order to protect health and environmental safety. In support of its finding, the court cited language from section after section of the CPA referencing radiation hazards, noted that the CPA imposes a condition on the ability of facility owners to accept mixed waste that is generated off-site, and pointed out that some provisions in the CPA regulate "pure" AEA radionuclides. Based on the foregoing, the court concluded that the purpose of the CPA is "to regulate the treatment, storage, and disposal of radioactive materials, among other materials, in order to protect the health and safety of Washington residents and the environment." While the court commented that such regulation might be "laudable" in its purpose, it concluded that it clearly "invades the province of the AEA."

*The CPA Has Direct and Substantial Effects* The court found that the CPA "is also preempted because it directly and substantially impacts the DOE's decisions on the nationwide management of nuclear waste." In so ruling, the court noted that Hanford is the only federal facility that can accept off-site mixed waste for disposal and that the use of commercial facilities is limited due to uncertainties regarding their long-term availability and prohibitions against the acceptance of higher-activity mixed waste, classified waste and other types of waste. The fact that DOE is not currently shipping waste to Hanford is irrelevant, according to the court. "The facilities at Hanford are part of the DOE's overall nuclear waste management

plan," said the court. "Legislation geared to effectively close Hanford for an extended period of time directly affects the DOE's ability to make decisions regarding if and when it will ship additional waste to Hanford.

**Savings Clause** The court noted that the CPA contains a savings clause that authorizes the Washington Department of Ecology to "regulate mixed wastes to the fullest extent it is not preempted by federal law." The court, however, declined to simply sever the offending provisions, stating as follows:

"Although it might be possible to excise those provisions that deal solely with radioactive materials, to construe the remaining sections of the CPA as limited to the nonradioactive component would require us to examine and rewrite most of the statute in a vacuum as to how the various provisions were intended to intersect and in a way that would be at odds with the purpose of the statute … We will not undertake this task of unscrambling the egg … And, as a practical matter, excising the most significant conflicts in the statute would result in a very [different] statute than the one envisioned by I-297."

***United States v. Science Applications International Corporation***

# NRC Wins Conflict-of-Interest Case Against SAIC

On July 31, a federal jury in the District of Columbia found Science Applications International Corporation (SAIC) liable for violating the False Claims Act and breaching a contract with the U.S. Nuclear Regulatory Commission. Following a four-week trial, the jury found that SAIC knowingly submitted 60 false claims for payment and knowingly made 17 false statements to get claims paid on two NRC contracts in the 1990s. The United States was awarded $1.9 million in damages by the jury. The award was tripled to $5.91 million under the False Claims Act. SAIC also must pay penalties of between $5,000 and $10,000 for each of the 77 false claims and statements that it submitted to NRC.

"The NRC is pleased the jury recognized SAIC's conflicts of interest and ruled in favor of the government," said Bill Borchardt, the NRC's Executive Director of Operations. "The verdict vindicates our earlier decision to terminate SAIC's contract; we do not and will not tolerate conflicts of interest where public health and safety is concerned."

The jury found that SAIC failed to avoid and disclose conflicts of interests that had the potential to bias its work helping the NRC create a rule that would govern whether radioactive materials from nuclear facilities could be released or recycled. The jury found that SAIC knowingly concealed business relationships with private corporations that stood to benefit from the rule. SAIC's conflicting relationships were exposed by a private citizen at a public meeting held in November of 1999 and the NRC terminated SAIC's contract for conflicts of interest soon thereafter.

The U.S. Department of Justice, Civil Division, and the NRC's Office of General Counsel represented the United States in the case, with investigative support from the NRC's Office of Inspector General.

***Advisory Committee on Reactor Safeguards (ACRS)***

# ACRS Holds July Meeting

The U.S. Nuclear Regulatory Commission's Advisory Committee on Reactor Safeguards (ACRS) held a public meeting from July 9 – 11 in Rockville, Maryland. ACRS advises the Commission, independently from the NRC staff, on licensing and operation of nuclear power plants and related safety issues.

During the course of the meeting, committee members discussed selected sections of the Safety Evaluation Report on the Economic Simplified Boiling Water Reactor design certification application. Other items on the agenda included a proposal to increase Millstone Unit 3 reactor's power by seven percent; rules and guidance in the area of safeguards and security; and, the status of the 2008 seismic research program plan, including the status of resolution of Generic Safety Issue-99: Implications of Seismic Hazard for Nuclear Power Plants in Central and Eastern United States (GSI-199).

*Complete agendas for ACRS meetings can be found on NRC's web site at http://www.nrc.gov/reading-rm/doc-collections/acrs/agenda/2008.*

# Michael Ryan Appointed to ACRS

Michael Ryan has been appointed by the U.S. Nuclear Regulatory Commission to serve on the agency's Advisory Committee on Reactor Safeguards (ACRS)—an independent group of technical experts which advises the Commission on licensing and operation of nuclear power plants and related safety issues. Ryan previously chaired the Advisory Committee on Nuclear Waste & Materials, which was merged into the ACRS earlier this year.

Ryan is an independent consultant in radiological sciences and health physics. He has served on a number of national councils, including the Technical Advisory Control Council for the state of South Carolina for 19 years and the National Council on Radiation Protection and Measurements since 1992. He is an adjunct faculty member at Texas A&M University and Vanderbilt University. In addition, Ryan has served as the Editor-in-Chief of the *Health Physics* journal since 2000. Prior to his career as a health physicist, Ryan served as Vice President and General Manager for Chem-Nuclear Systems, Inc.

Ryan received his doctorate in 1982 from the Georgia Institute of Technology, where he was later inducted in the Academy of Distinguished Alumni.

***U.S. Department of Energy***

# Review of DOE's Hanford Waste Treatment Plant Released

The U.S. Nuclear Regulatory Commission has concluded that the Department of Energy's regulatory processes for its Waste Treatment Plant at the Hanford nuclear reservation in Washington state, if properly implemented, are adequate to ensure public health and safety. The conclusion is contained in a review that was delivered to Congress and the Secretary of Energy on August 6 and then made public on August 12. Congress required NRC to conduct the review, which was conducted with the full cooperation of DOE, as part of the Omnibus Appropriations Bill for Fiscal Year 2008.

The regulations and processes that DOE has in place for the Waste Treatment Plant are, in most cases, similar to those of the NRC. However, they differ in significant areas primarily because the

DOE is the owner/operator of the plant rather than solely a regulator like the NRC. DOE essentially self-regulates the construction and operation of the plant by its contractors. DOE's regulatory process therefore covers areas not typically addressed by NRC regulations, such as general industrial safety. DOE also differs from NRC in that its safety-related decision making process does not provide for direct stakeholder involvement.

The report identifies several technical issues and offers suggestions for DOE in areas including transparency of its processes, radiation safety, and the focus of its allegations program. However, the report contains no specific recommendations for Congress and DOE.

NRC staff held a public meeting in Richland, Washington on August 28 to discuss the results of the agency's review. A public meeting was previously held on February 13 in Richland to discuss the scope of the review.

*A copy of NRC's review can be found on the NRC's Adams online document system at http://www.nrc.gov/reading-rm/adams/web-based.html.*

## *U.S. Nuclear Regulatory Commission*

# Briefs Filed re Italy Hearing Requests

On July 10, 2008, Energy*Solutions* filed with the U.S. Nuclear Regulatory Commission its opposition to hearing and intervention requests concerning import and export license applications filed by the company's facility in Clive, Utah. The State of Utah and various organizations had petitioned the Commission via separate filings dated June 10 to hold public hearings on the applications. Utah's filing also included a petition for leave to intervene in the matter. (See *LLW Notes*, May/June 2008, pp. 9-13.) Utah responded to Energy*Solutions*' filing with a Reply dated July 21, 2008.

**Background**

**Energy*Solution's* Applications** On September 14, 2007, Energy*Solutions* applied for licenses from the U.S. Nuclear Regulatory Commission ("NRC") to import up to 20,000 tons of potentially radioactively contaminated material from Italy and to export for return to generators in Italy any of the imported waste that can not be recycled or does not meet the Clive Facility's waste acceptance criteria for disposal. (See *LLW Notes*, November/December 2007, pp. 6-9.) Under the proposal, the contaminated material would be processed at Energy*Solutions*' Bear Creek Facility for recycling and beneficial reuse with any resultant waste being disposed at the Clive Facility. Energy*Solutions* estimates that approximately 1,600 tons of the imported material would be disposed as Class A LLRW at the Clive Facility.

*For additional information, please contact Tye Rogers, Vice President of Compliance and Permitting at EnergySolutions, at (801) 649-2000.*

**NRC's Review** On February 11, 2008, the NRC published two notices in the *Federal Register* announcing the receipt of applications from Energy*Solutions* regarding the Italian waste import proposal and inviting public comment thereon. In response to requests from interested stakeholders, NRC extended the public comment period—which was originally set to expire on March 12, 2008—to June 10, 2008. (See *LLW Notes*, March/April 2008, pp. 7-8.)

*The notice of receipt of the import application may be found at 73 Federal Register 7765 (February 11, 2008). The notice of receipt of the export application may be found at 73 Federal Register 7764 (February 11, 2008).*

**Litigation** On May 5, 2008, Energy*Solutions* filed a lawsuit in the U.S. District Court for the District of Utah, Central Division, against the Northwest Compact and against Michael Garner solely in his official capacity as Executive Director of the

Northwest Compact. The action seeks, among other things, a declaratory judgment "to clarify the authority of the Northwest Compact to govern Energy*Solutions*' privately owned, commercial, low-level radioactive disposal site in Clive, Utah." (See *LLW Notes,* May/June 2008, pp. 25-28.)

**Northwest Compact Resolution** On May 8, 2008, the Northwest Interstate Compact on Low-Level Radioactive Waste Management unanimously adopted a resolution concerning access for low-level radioactive wastes generated in foreign countries to the region for disposal at the Energy*Solutions*' Clive Facility—including foreign generated waste that is characterized as domestic generated waste by another compact or unaffiliated state. The resolution clarifies that an arrangement would need to be adopted by the compact prior to such waste being afforded access to the region for disposal and that to date the compact has not considered, reviewed or approved any such arrangement. (See *LLW Notes,* May/June 2008, pp. 1, 7-9.)

*For additional information, please contact Michael Garner, Executive Director of the Northwest Compact, at (360) 407-7102.*

**Congressional Interest** On May 20, 2008, the Subcommittee on Energy and Air Quality of the House Energy and Commerce Committee of the U.S. Congress held a hearing that, among other things, addressed (1) legislation [H.R. 5632] introduced by Representative Bart Gordon (D-TN) that proposes to strip the NRC of its jurisdiction to authorize the importation of low-level radioactive waste and (2) Energy*Solutions*' proposal regarding the importation of waste from Italy. Testifying at the hearing were representatives from NRC, the Utah Radiation Control Board, Energy*Solutions* and the U.S. Government Accountability Office. (See *LLW Notes,* May/June 2008, pp. 20-24.)

*To view an archived video Web Cast of the subcommittee's hearing, please go to http://energycommerce.house.gov. Windows Media Player is required to view the Web cast.*

**Requests for Hearing and Intervention** On June 10, 2008, on behalf of Utah Governor Jon Huntsman, Jr., the state's Attorney General's Office filed a request for a hearing and a petition for leave to intervene. In its filing, the state argues that (1) it has an interest that may be affected by the Commission's actions, (2) its timely intervention is in the public interest; (3) its participation will assist the Commission in making its licensing determination; and (4) the requested relief—denial of the license applications—is within the Commission's authority to grant. On the same day, multiple organizations made a joint filing opposing Energy*Solutions*' license applications, supporting Utah's request for a hearing in the State of Utah, and requesting a public hearing in middle Tennessee. The Nuclear Information and Resource Service (NIRS) also filed a separate, independent request for a hearing that includes issues specific to both Tennessee and Utah. (See *LLW Notes,* May/June 2008, pp. 9-13.)

**NRC Standards**

**Requests for Hearing or Intervention** A request for hearing or intervention petition must be timely, list the issues to be raised, and meet the relevant provisions of 10 CFR 110.82 and 110.84. The Commission may consider granting a hearing or intervention request when the petitioner has asserted an interest which may be affected by considering the nature of the alleged interest and how it relates to the licensing decision, as well as "the possible affect of any order on that interest, including whether the relief request is within the Commission's authority, and, if so, whether granting relief would redress the alleged injury." The Commission has discretion to grant a hearing even if the petitioner fails to assert or establish an interest that may be affected if (1) "a hearing would be in the public interest" and (2) "would assist the Commission in making the statutory determinations required by the Atomic Energy Act."

**Licensing Determination** 10 CFR 110.43 provides that, in making its licensing determination, the Commission will consider the following criteria:

(a) The proposed import is not inimical to the common defense and security.

(b) The proposed import does not constitute an unreasonable risk to the public health and safety.
(c) Any applicable requirements of subpart A of part 51 of this Chapter [NEPA] are satisfied.
(d) With respect to the import of radioactive waste, an appropriate facility has agreed to accept the waste for management or disposal.

**Energy*Solutions'* Filings**

Energy*Solutions* argues that NRC should deny the petitions because both the state and organizations fail to establish an interest that may be affected and fail to show that a hearing would be in the public interest or that it can assist the Commission in making the required determinations.

Energy*Solutions* explains its overall position as follows:

> The public health and safety require the United States to have commercially viable low-level radioactive waste ("LLRW") disposal companies such as Energy*Solutions* that can safely and responsibly manage the recycling, processing and disposal of nuclear material. There is a global marketplace for nuclear services, including waste processing and disposal services, and the viability of U.S. commercial disposal companies is significantly enhanced by participation in this global market. Significant delay in the issuance of this routine import license could establish a climate of regulatory uncertainty that would be detrimental to the viability of the commercial LLRW disposal industry in this country.

**Answer to State of Utah** Energy*Solutions*' filing contains the following two specific arguments in opposition to Utah's petition:

- Utah fails to establish an interest that may be affected, fails to demonstrate that foreign waste is any different from domestic waste from a health and safety perspective, and fails to show that the purported harm to its economic interest is within the "zone of interests" protected by any relevant statute; and,
- discretionary intervention would not assist the Commission or be in the public interest because there is no unreasonable risk to the public health and safety, no additional National Environmental Policy Act (NEPA) analysis is required and an appropriate facility has agreed to accept the waste.

In regard to the issue of the appropriateness of the Clive facility to accept the foreign waste, Energy*Solutions* argues that such disposal is consistent with Utah law and the Clive facilty's license and that any opposition by the Northwest Compact is irrelevant because it lacks jurisdiction over the facility.

**Answer to Organizations** Energy*Solutions*' filing contains the following two specific arguments in opposition to the organizations' petitions:

- they fail to establish either organizational or representational standing because they only offer a generalized interest, no individual has authorized the organization to seek a hearing, "proximity presumption" does not apply since there is no showing of an obvious potential for offsite consequences, and the judicial standing test is not met since no injury-in-fact has been established within the zone of interest, causation and redressability; and,
- they fail to show that a hearing on the issues they raise would be in the public interest, or that they would assist the Commission in making its required findings, since all of the issues raised are fully addressed in the license applications and petitioners do not claim to have any specialized expertise or information.

**Utah's Reply**

Utah argues that standing for a sovereign state differs from the precepts of organizational standing

for a non-state entity, the state has raised substantive issues that support NRC's exercise of its discretionary authority to grant a hearing, there is not sufficient and factual information in the application and elsewhere in the record for NRC to grant approval, and the Northwest Compact does have jurisdiction over the Clive facility.

The state responds to Energy*Solutions*' filing in general as follows:

> Energy*Solutions*' Answer contains many inaccuracies and contradictions. Most strikingly, Energy*Solutions* calls its application to import low-level radioactive waste (LLRW) from Italy "routine." At last count, the NRC had received 2,871 public comments on Energy*Solutions*' import application, the vast majority in opposition to the application. Moreover, legislation has been introduced in Congress to ban the importation of most LLRW. These facts belie the assertion that Energy*Solutions*' application is "routine." Furthermore, Energy*Solutions*' Answer makes the contradictory claim on the one hand that "the viability of U.S. commercial disposal companies is significantly enhanced by participation in [the] global market" and on the other that "the effect of this additional waste will be trivial, given that it would represent less than one percent of the amount of waste disposed of at the Clive facility each year." A way to reconcile these contradictory statements is that Energy*Solutions* intends to routinely import foreign waste as part of its international nuclear disposal business and turn the Clive disposal site into a global dumping ground for the detritus from past foreign nuclear activities.

Utah's filing contains the following specific arguments in response to Energy*Solutions* Answer:

- the state takes exception to Energy*Solutions*' claims that NRC derives discretion from the Nuclear Non-Proliferation Act of 1978 (NNPA) not to hold a hearing on an import application when an entity has established standing and that a state must demonstrate standing under the same principles as any other potential party;
- Utah has standing based on the state's right to protect its proprietary and sovereign interest in its lands, waters, wildlife, and other natural resources, as well as its right to protect the physical and economic health and well being of its citizenry;
- Energy*Solutions*' "generic" license application to import foreign waste for disposal presents precedential legal and safety questions, the company's refusal to classify the waste until after receipt and processing is grounds for denial of the license applications, there is a risk that the waste may become stranded in the United States, and NRC cannot adequately assess health and safety risks associated with the proposed import and disposal of this foreign-generated waste;
- a NEPA analysis is warranted due to special circumstances including that this is a precedent setting license application that could serve as a test case for the importation of additional foreign-generated waste; and,
- an appropriate facility has not agreed to accept the waste because Energy*Solutions*' Clive facility may not legally accept foreign-generated waste given the Northwest Compact's resolution requiring compact approval prior to such waste being granted access to the site.

# Combined License Application Reviews Continue

The U.S. Nuclear Regulatory Commission continues to process Combined License (COL) applications for the Levy site in Florida; the Vogtle site in Georgia; the Summer site in South Carolina; and, the Grand Gulf site in Mississippi. In addition, the agency is preparing for the submission of expected applications for the Bell Bend site in Pennsylvania; the Fermi site in Michigan; the Nine Mile Point site in New York; the Victoria site in Texas; and, the Callaway site in Missouri.

NRC is currently reviewing a total of nine COL applications for sites in Alabama, Georgia, Maryland, Mississippi, North Carolina, South Carolina (two sites), Texas and Virginia. The agency is conducting acceptance checks on applications for sites in Florida and Missouri. An additional six COL applications are expected to be submitted in 2008.

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

**Levy County**

On August 15, NRC staff made available the public version of a COL application for two new reactors at the Levy County site—about 10 miles northeast of Crystal River, Florida. The applicant, Progress Energy, submitted the application and associated information on July 30. The application seeks approval to build and operate two AP1000 reactors at the site. The AP1000 is a Westinghouse-designed 1,100 MWe pressurized-water reactor that was certified by the NRC in 2006. NRC is currently reviewing a Westinghouse application, submitted in May 2007, to amend the certified design. (For additional information, go to http://www.nrc.gov/reactors/new-licensing/design-cert/amended-ap1000.html.)

NRC is currently conducting an initial check of the Levy application to determine whether it contains sufficient information required for a formal review. If the application is accepted, NRC will then announce an opportunity for the public to participate in an adjudicatory hearing. The application, minus proprietary or security-related details, is available on the NRC website at http://www.nrc.gov/reactors/new-licensing/col/levy.html.

**Bell Bend**

A public meeting was conducted in Bloomsburg, Pennsylvania on August 19 to discuss how the agency will review an expected COL application for a new reactor at the Bell Bend site—about seven miles southeast of Berwick, Pennsylvania. The prospective applicant, PPL, has informed NRC that it intends to apply later this year for a license to build and operate an Evolutionary Power Reactor (EPR) at the site. The EPR is a 1,600 MWe large pressurized water reactor of evolutionary design that is currently under NRC review. (For additional information, go to http://www.nrc.gov/reactors/new-licensing/design-cert/epr.html.)

During the course of the meetig, NRC staff gave presentations that describe the overall COL review process, which includes safety and environmental assessments, as well as how the public can participate in the process. NRC also hosted an open house for an hour prior to the meeting so members of the public would have the opportunity to talk informally with agency staff.

**Fermi Site**

On August 20, NRC staff conducted a public meeting to discuss how the agency will review an expected COL application for a new reactor at the Fermi site—about five miles northeast of Monroe, Michigan. The prospective applicant, Detroit Edison, has informed NRC that it intends to apply later this year for a license to build and operate an Economic Simplified Boiling Water Reactor (ESBWR) at the site. The ESBWR is a 1,500 MWe design that is currently under NRC review, expected

to be completed in mid-2010, for possible certification. (For additional information, go to http://www.nrc.gov/reactors/new-licensing/design-cert/esbwr.html.)

**Nine Mile Point Site**

On August 21, NRC staff conducted a public meeting to discuss how the agency will review an expected COL application for a new reactor at the Nine Mile Point site—about six miles northeast of Oswego, New York. The prospective applicant, UniStar, has informed NRC that it intends to apply later this year for a license to build and operate an Evolutionary Power Reactor (EPR) at the site. (For additional information on the EPR, see above.)

**Victoria County**

NRC staff conducted a public meeting on August 7 to discuss how the agency will review an expected COL application for two reactors at the Victoria County site—about 13 miles south of Victoria, Texas. The prospective applicant, Exelon, has told NRC that it intends to apply later this year for a license to build and operate two Economic Simplified Boiling Water Reactors (ESBWR) at the site. (For additional information on the ESBWR, see above.)

**Vogtle**

On July 17, NRC staff conducted a public meeting to discuss the agency's review process for Southern Nuclear Operating Company's COL application to build and operate two AP1000 reactors at the Vogtle site near Waynesboro, Georgia. Southern Nuclear submitted the application and associated information on March 31. The application, minus proprietary or security-related details, is available on the NRC web site at http://www.nrc.gov/reactors/new-licensing/col.html. (For additional information on the AP1000, see above.)

**Callaway Site**

On July 9, NRC staff conducted a public meeting to discuss how the agency will review an expected COL application for a new reactor at the Callaway site—about ten miles southeast of Fulton, Missouri. The prospective applicant, AmerenUE, has informed NRC that it intends to apply later this year for a license to build and operate an Evolutionary Power Reactor (EPR) at the site. (For additional information on the EPR, see above.)

**Summer Site**

On June 26, NRC made available the public version of a COL application for two new reactors at the Summer site near Columbia, South Carolina. The applicants, South Carolina Electric & Gas (SCE&G) and Santee Cooper, submitted the application and associated information on March 31. The application seeks approval to build and operate two AP1000 reactors at the site, which is located approximately 26 miles northwest of Columbia. (For additional information on the AP1000, see above.)

NRC is currently conducting an initial check of the Summer application to determine whether it contains sufficient information required for a formal review. If the application is accepted, NRC will then announce an opportunity for the public to participate in an adjudicatory hearing. The application, minus proprietary or security-related details, is available on the NRC web site at http://www.nrc.gov/reactors/new-licensing/col.html.

**Grand Gulf**

On June 26, NRC announced the opportunity to participate in the hearing on a COL application for a new reactor at the Grand Gulf site in central Mississippi. Energy Operations submitted the application on February 27, seeking approval to build and operate an Economic Simplified Boiling Water Reactor (ESBWR) at the site, which is located approximately 25 miles south of Vicksburg. (For additional information on the ESBWR, see above.) The application, minus proprietary or security-related details, can be found on NRC's web site at http://www.nrc.gov/reactors/new-licensing/col/grand-gulf.html.

On April 17, NRC staff determined that the application contains sufficient information to be formally docketed. Docketing the application does not preclude additional requests for information as the review proceeds; nor does it indicate whether the Commission will issue the license. The docket number established is 52-024.

NRC subsequently issued in the *Federal Register* an opportunity to intervene in the proceeding on the application. The deadline for petitioning to intervene is 60 days after publication of the notice. Petitions may be filed by anyone whose interest may be affected by the proposed license, who wishes to participate as a party in the proceeding, and who meets the criteria set out in NRC regulations (10 CFR Part 2).

*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.*

# 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

- conducted public meetings to solicit comments on possible environmental impacts of 20 additional years of operation at the Prairie Island nuclear power plant, Units 1 and 2;
- had three judges from the Atomic Safety and Licensing Board (ASLB) Panel conduct an evidentiary hearing on an application by Entergy Nuclear Operations to renew its license to operate the Vermont Yankee nuclear power plant for another 20 years; and,
- presented the preliminary results from a team inspection conducted as part of the agency's ongoing review of the Indian Point nuclear power plant's license renewal application.

**Prairie Island Nuclear Plant**

On July 30, NRC staff conducted two public meetings to solicit comments on possible environmental impacts of 20 additional years of operation at the Prairie Island nuclear power plant, Units 1 and 2. Both sessions started with an overview and an NRC staff presentation on the agency's review of license renewal applications, with special emphasis on the environmental review process. Following the presentations, audience members were provided an opportunity to offer comments on environmental issues they consider worthy of review.

The Prairie Island Nuclear Generating Plant, which is located approximately 28 miles southeast of Minneapolis, has two pressurized water reactors. The current operating licenses expire on August 9, 2013 for Unit 1 and on October 29, 2014 for Unit 2. Nuclear Management Company, the plant's operator, submitted the renewal application on April 15.

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

**Vermont Yankee Nuclear Plant**

Beginning on July 21, three judges from the Atomic Safety and Licensing Board (ASLB) Panel conducted an evidentiary hearing on an application by Entergy Nuclear Operations to renew its license to operate the Vermont Yankee nuclear power plant for another 20 years. The hearing focused on three contentions raised by the New England Coalition (NEC) and the Vermont Department of Public Service.

The ASLB handles and decides challenges to proposed nuclear licensing matters and is a quasi-judicial arm of the Nuclear Regulatory Commission. The evidentiary hearing is a trial-type proceeding in which witnesses and technical experts from NEC, Entergy and the NRC staff testified under oath, with the board posing questions. The State of Vermont was also a party to the proceeding and the

State of New Hampshire and the Commonwealth of Massachusetts participated as "interested states." Members of the public were allowed to attend and observe the evidentiary hearing but were not permitted to participate in this phase of the litigation.

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.

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

**Indian Point Nuclear Plant**

On June 18, NRC staff presented the preliminary results from a team inspection conducted as part of the agency's ongoing review of the Indian Point nuclear power plant's license renewal application. The focus of the meeting was to discuss with Entergy the results of an inspection that was carried out by NRC earlier this year. On a sampling basis, the NRC team inspected the plant's aging management programs as they are applied to systems, structures and components within the scope of license renewal. The team also inspected whether non-safety-related systems, structures and components were properly scoped and screened to ensure they are appropriately addressed. The results of the inspection will be factored into the agency's overall decision on the plant's license renewal application.

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.

Numerous governmental entities and organizations have submitted requests for a hearing on the Indian Point license renewal application.

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

**NRC Regulations/Status of Renewals**

Under NRC regulations, a nuclear power plant's original operating license may last up to 40 years. License renewal may then be granted for up to an additional 20 years, if NRC requirements are met. To date, NRC has approved license extension requests for 48 reactor units. In addition, NRC is currently processing license renewal requests for several other reactors.

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

***(Continued from page 34)***

- Any risk-informed regulatory guidance should address the following: disposal under the provisions of 10 CFR 20.2002 (alternate disposal) and 10 CFR 61.58 (implementation of alternative systems of waste classification), radionuclide quantity and concentration, waste form and physical and chemical characteristics, waste packaging, disposal cell design, disposal cell cover design, and environmental processes and features.

# NRC and Prairie Island Indian Community Sign MOU

On June 17, NRC and the Prairie Island Indian Community (PIIC) signed a Memorandum of Understanding (MOU) for working together to review potential environmental impacts of the proposed license renewal of the Prairie Island nuclear power plant located near Red Wing, Minnesota. This is the first MOU dealing with a reactor license renewal environmental review.

The MOU describes each side's roles and responsibilities as the NRC leads the review of the application to renew the operating licenses for Units 1 and 2 at the Prairie Island Nuclear Generating Plant. It recognizes PIIC's special expertise and information as it relates to historic and archaeological resources, socioeconomics, land use, and environmental justice. The NRC will give the community copies of technical reports, data and other information that fall under the PIIC's areas of interest, and the agency will give extra weight to the community's comments in those areas. The agency retains final authority on the renewal decision.

The complete text of the MOU is available in the NRC's electronic documents database, ADAMS, by entering ML081610273 at http://adamswebsearch.nrc.gov/dologin.html.

*For additional information, please contact Richard Plasse at (301) 415-1427 or Richard.plasse@nrc.gov.*

# Proposed Rule Issued re Reactor Vessel Requirements

In early August, the U.S. Nuclear Regulatory Commission issued a supplemental proposed rule improving the methods that pressurized-water reactor (PWR) licensees use to account for some effects of aging on their reactor vessels. The rule increases the realism of calculations used to examine a PWR's susceptibility to a phenomenon known as pressurized thermal shock (PTS). The phenomenon may occur under some scenarios that rapidly cool the internal surface of a reactor vessel while the vessel is pressurized. This can subject the steel to large thermal stresses, which can lead to cracking and potential failure of the vessel. The other type of U.S. nuclear power plant design, a boiling-water reactor, is not susceptible to PTS.

Under the proposed rule, licensees of operating PWRs may voluntarily adopt a more realistic technical approach for determining the probability of vessel failure during a PTS event. This revised approach was derived using data from research on currently operating PWRs that indicate the overall risk of PTS-induced vessel failure after 60 years of reactor operation is much lower than previously estimated.

If a licensee chooses to adopt the new approach, the rule would require PWR operators to perform detailed analysis of both reactor vessels surveillance data and the results of regular reactor vessel inspections. If the analyses' findings exceed certain limits, the operator must take steps to either limit the reactor vessel's exposure to neutron radiation or determine how the reactor's systems can be modified to prevent PTS-induced vessel failure.

*The rule is available on NRC's web site by entering ML081440656 at http://adamswebsearch.nrc.gov/dologin.htm. For additional information, please contact NRC staff members Veronica Rodriguez at (301) 415-3703 or veronica.rodriguez@nrc.gov, Barry Elliot at (301) 415-2709 or barry.elliot@nrc.gov, or Mark Kirk at (301) 415-6015 or mark.kirk@nrc.gov.*

# Hearing Opportunity for Uranium Recovery in Wyoming

On July 10, the U.S. Nuclear Regulatory Commission published in the *Federal Register* an opportunity to request a hearing on the license application by Lost Creek ISR, LLC, to construct and operate an in-situ leach uranium recovery operation at the Lost Creek site in Sweetwater County, Wyoming. The deadline to request a hearing is September 8.

Lost Creek initially submitted the application on October 30, 2007, but withdrew it on February 29 in order to revise its radiation protection program. The application was resubmitted on March 31.

NRC staff has completed its initial review and determined that the application is sufficiently complete to be docketed. Docketing the application does not indicate approval of the proposed operation, nor does it preclude NRC from requesting additional information from the applicant to aid in performing the review. Staff will next begin detailed environmental and safety reviews.

In-situ recovery of uranium involves injecting a leaching solution, typically water mixed with oxygen and sodium bicarbonate, through wells into an underground ore deposit to dissolve 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 Federal Register notice and the license application for Lost Creek are available on the NRC's web site at http://www.nrc.gov/about-nrc/regulatory/adjudicatory/hearing-license-applications.html#2.*

# Draft GEIS re In-Situ Leach Uranium Recovery

In late July, the U.S. Nuclear Regulatory Commission announced the opportunity for public comment on a draft Generic Environmental Impact Statement (GEIS) for in-situ leach uranium recovery operations in the western United States. In-situ leach is a process in which local non-potable groundwater with added oxygen and sodium carbonate or bicarbonate is injected into an underground ore deposit to leach out (or dissolve) uranium, which is then pumped to the surface for additional processing.

The draft GEIS, which was developed with the cooperation of the Wyoming Department of Environmental Quality, identifies and evaluates potential environmental impacts common to the construction, operation, aquifer restoration and decommissioning of in-situ leach facilities in the Western states.

NRC currently expects to receive 20 applications for new uranium recovery operations and 10 applications for expansion or restart of existing facilities through 2011 of which approximately 75 percent are expected to be for in-situ leach operations. By addressing common issues associated with environmental reviews of these facilities, NRC staff will use the GEIS as a starting point for its site-specific environmental analyses of individual license applications or as a supplement to previous environmental analyses of existing sites.

The agency will hold a series of public meetings between August and September in Wyoming, South Dakota, Nebraska and New Mexico—the four states where uranium milling companies have indicated interest in applying for new NRC licenses—during which staff will present the findings of the draft GEIS and accept oral and written comments. Logistical information for the meetings can be found on the NRC web site at http://www.nrc.gov under "Public Meetings."

Public comments on the draft GEIS will be accepted through October 7. They may be addressed to the Chief, Rules Review and Directives Branch, Mailstop T6-D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Comments may also be submitted by electronic mail to NRCREP.Resource@nrc.gov. Please include "Uranium Recovery GEIS" in the subject line.

*The draft GEIS is available on the NRC web site at http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1910.*

# Low-Activity Waste Observations and Recommendations Sent to NRC

By letter dated April 30, 2008, the Advisory Committee on Nuclear Waste & Materials (ACNW&M) forwarded observations and recommendations regarding the management of low-activity radioactive waste to the U.S. Nuclear Regulatory Commission. The letter follows a February 2008 working group meeting (WGM) held by the committee in an effort "to better understand how commercial low-activity radioactive waste (LAW) is being managed in the United States." (See *LLW Notes*, January/February 2008, pp.19-20.) That meeting was conducted in response to a Commission Action Memorandum directing the ACNW&M to "… address how requirements under the Resource Conservation and Recovery Act Subtitle C compare with 10 CFR Part 61, and whether RCRA Subtitle C facilities might be bounding for low activity waste …"

**Observations**

The committee offers the following seven key observations:

- WGM participants unanimously expressed the view that no changes to NRC regulations are needed, but that case-specific guidance on acceptable approaches for managing current or new LAW streams would be useful.
- Risk-informed approaches to LAW management should emphasize the radionuclide content rather than origin. Guidance on ways to improve the management and disposal of LAW commensurate with its risks and on the LAW quantities and concentrations in wastes that would be exempt from NRC regulation would be useful.
- Some states have permitted the disposal of LAW in both RCRA Subtitle C and Subtitle D landfills by evaluating case-by-case information and progressively building a body of evidence for use in making disposal authorizations. Typically, disposal costs are lower for disposal at a RCRA landfill than at an LLW disposal facility.
- There are key differences between EPA/RCRA and NRC/LLW regulations for protecting the public and the environment.
- There are differences in the basic requirements for Subtitle C RCRA landfills and those for LLW disposal facilities. The decision to dispose of LAW in either type of facility depends on performance assessments designed to assess radiological risks. "Site specific performance assessments to date indicate that performance objectives have been met at RCRA Subtitle C landfills where LAW has been disposed. This suggests that RCRA Subtitle C requirements could be generically bounding for LAW."
- WGM participants indicated that detailed guidance regarding performance assessments for demonstrating the health, safety and performance of RCRA landfills for the disposal of LAW would be useful—including issues such as radionuclide quantity and concentration, waste form and physical and chemical characteristics, disposal cell design, disposal cell cover design, and environmental processes and features.
- EPA intends to revisit the 2003 ANPR that discusses RCRA as an alternative for the disposal of wastes containing LAW in RCRA landfills and decide how to proceed.

**Recommendations**

The committee offers the following three recommendations:

- There is no need at this time to revise NRC's LLW regulations found in 10 CFR Part 61 to address disposal of LAW at RCRA landfills. Continued disposal of LAW at RCRA Subtitle C landfills can be accomplished safely.
- The Commission should develop risk-informed regulatory guidance concerning the disposal of LAW at RCRA landfills, including current and emerging types of LAW, by building on its case-by-case experience.

***(Continued on page 31)***

# To Obtain Federal Government Information

## by telephone

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

## by internet

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

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

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

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

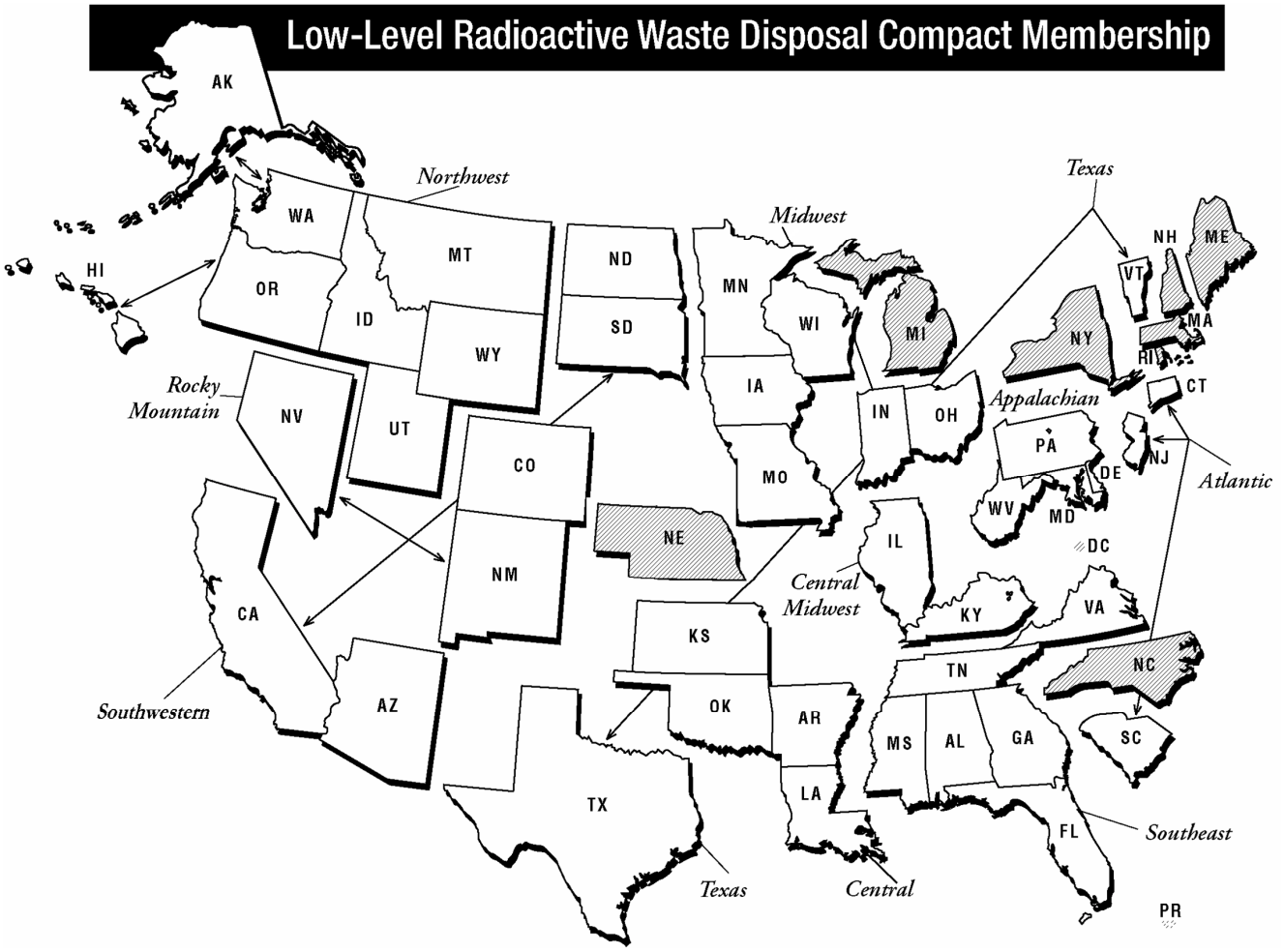
- GAO homepage (access to reports and testimony) .....**www.gao.gov**

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

## Accessing LLW Forum, Inc. Documents on the Web

*LLW Notes*, LLW Forum *Contact Information* 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 membership information are also available on the LLW Forum web site at www.llwforum.org. The *Summary Report* and accompanying Development Chart have been available on the LLW Forum web site since January 1997.

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




**Appalachian Compact**
Delaware
Maryland
Pennsylvania
West Virginia

**Atlantic Compact**
Connecticut
New Jersey
South Carolina

**Central Compact**
Arkansas
Kansas
Louisiana
Oklahoma

**Central Midwest Compact**
Illinois
Kentucky

**Northwest Compact**
Alaska
Hawaii
Idaho
Montana
Oregon
Utah
Washington
Wyoming

**Midwest Compact**
Indiana
Iowa
Minnesota
Missouri
Ohio
Wisconsin

**Rocky Mountain Compact**
Colorado
Nevada
New Mexico

*Northwest accepts Rocky Mountain waste as agreed between compacts*

**Southeast Compact**
Alabama
Florida
Georgia
Mississippi
Tennessee
Virginia

**Southwestern Compact**
Arizona
California
North Dakota
South Dakota

**Texas Compact**
Texas
Vermont

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