LLW notes

Volume 23, Number 6 November/December 2008

U.S. Nuclear Regulatory Commission

NRC Staff Issue Recommendations re Depleted Uranium

The U.S. Nuclear Regulatory Commission recently made public a paper (SECY-08-0147) providing staff analysis and recommendations regarding the disposal of large quantities of depleted uranium. The paper, which is dated October 7, 2008, responds to Commission direction provided in Order CLI-05-20 (In the Matter of Louisiana Energy Services [LES], October 19, 2005.) In that Order, the Commission directed staff, "outside of the LES adjudication, to consider whether the quantities of depleted uranium (DU) at issue in the waste stream from uranium enrichment facilities warrant amending section 61.55(a)(6) or the section 61.55(a) waste classification tables."

In response to the Commission's order, staff completed a technical analysis of the impacts of near-surface disposal of large quantities of DU, such as those anticipated to be generated at uranium enrichment facilities. The technical analysis evaluated whether amendments should be made to section 61.55(a) in order to assure that large quantities of DU are disposed of in a manner that meets the performance objectives in Subpart C of 10 CFR Part 61. Staff concluded that although near-surface disposal of large quantities of DU may be appropriate in some circumstances, it may not be appropriate under all site conditions. Due to the unique characteristics of DU, staff concluded that existing regulations should be amended in order to ensure the safe disposal of large quantities of this particular waste.

Staff then considered and evaluated four options to facilitate the safe disposal of DU. The options, as well as a summary of the perceived benefits and drawbacks for each, are presented in the staff paper. The paper contains the staff's recommendation to conduct "a limited rulemaking to revise Part 61 to specify the need for a disposal facility licensee or applicant to conduct a site-specific analysis that addresses the unique characteristics of the waste and the additional considerations required for its disposal prior to disposal of large quantities of DU and other unique waste streams such as reprocessing waste." Staff further recommends that (1) the technical requirements associated with the

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

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Low-Level Radioactive Waste Forum, Inc.

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

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LLW FORUM, INC

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Key to Abbreviations

U.S. Department of Energy	DOE
U.S. Department of Transportation	DOT
U.S. Environmental Protection Agency	EPA
U.S. Government Accountability Office	GAO
U.S. Nuclear Regulatory Commission	NRC
Naturally-occurring and accelerator-produced radioactive material	NARM
Naturally-occurring radioactive material	NORM
Code of Federal Regulations	CFR

Low-Level Radioactive Waste Forum, Inc.

Registration Open for Spring 2009 LLW Forum Meeting

Columbia, South Carolina

The Low-Level Radioactive Waste Forum is pleased to announce that registration is now open for the spring 2009 meeting. The meeting—which is being hosted by the Atlantic Compact and the State of South Carolina—will be held at the Hilton Hotel in Columbia, South Carolina on March 23-24, 2009.

Officials from states, compacts, federal agencies, nuclear utilities, disposal operators, brokers/processors, industry, and other interested parties are invited and encouraged to attend. The meeting is an excellent opportunity to stay up-to-date on the most recent and significant developments in the area of low-level radioactive waste management and disposal. It also offers an important opportunity to network with other government and industry officials and to participate in decision-making on future actions and endeavors affecting low-level radioactive waste management and disposal.

Persons who plan to attend the meeting are encouraged to make their hotel reservations and send in their registration forms as soon as possible as we have exceeded our block for the last few meetings. Once the block is full, the hotel may charge a higher rate. (The phone number for the Hilton Hotel is 803/758-6051. The web address is www.columbiacenter.hilton.com. Please ask for a room in the LLW Forum/Atlantic Compact LLRW Commission block.)

To access the meeting bulletin and registration form, please go to www.llwforum.org and scroll down to the first bold paragraph on the Home Page. The documents may also be found on the About Page under the header "Meetings."

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

Low-Level Radioactive Waste Forum Meetings *2009 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.

2009 Meetings

The Atlantic Compact and State of South Carolina will serve as hosts 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. Registration for the meeting is now open and a meeting bulletin and registration form can be found on the LLW Forum's web site. (See related story, this issue.) Persons planning to attend the meeting are encouraged to register and make their hotel reservations early, as space is limited.

The State of Utah has agreed to host the fall 2009 LLW Forum meeting at the Marriott Hotel in Park City, Utah. The meeting will be held from Monday, September 21 through Tuesday, September 22, 2009. A link to the hotel web site can be found at http://www.parkcitymarriott.com.

2010 Meetings

The State of Texas and Waste Control Specialists will co-host the spring 2010 meeting in Austin, Texas. The meeting will likely include an optional visit for interested parties to the WCS facility in Andrews County, Texas.

The State of New York has agreed to host the fall

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Northwest Compact/State of Idaho

American Ecology Announces 3rd Quarter Results

Provides Dividend and Initiates Stock Repurchase Program

On October 28, 2008, American Ecology Corporation reported operating results for its third quarter ended September 30, 2008.

Financial Highlights

Some overall financial highlights of the company's report include the following:

- quarterly operating income was $6.8 million, representing a $ 0.2 million increase over the third quarter of 2007;
- quarterly revenue increased 4% to $41.1 million, up from $39.4 million in the same quarter last year; and,
- gross profit was $10 million, which represents a 2% decrease from gross profit of $10.3 million reported in the third quarter of 2007.

Disposal Volumes

Although the company reported a 7% increase in "base" business from recurring customers compared to the same quarter last year on continued broker business growth, disposal volumes from "event" clean-up projects—including U.S. Army Corps of Engineers work—declined for the same period. Total volumes disposed at the Idaho, Nevada and Texas waste facilities declined 2% from the third quarter of 2007 to 263,000 tons in the third quarter of 2008. "While disposal volumes are up 15% year-to-date, delayed waste receipts from both government and private industry 'event' clean-up projects led to the first quarterly volume decline since the third quarter of 2006," commented Stephen Romano, Chairman and CEO. "Waste shipments are now back on track with multiple ongoing projects shipping in the fourth quarter."

New Thermal Desorption Facility

Romano also commented on the company's new thermal desorption recycling service in Texas. "We are pleased with progress made in launching our new thermal desorption service for a broad spectrum of recylable materials. While certain equipment modifications led to some downtime in the third quarter, we are now able to more efficiently process high moisture content material, delivering increased throughput capacity."

Guidance & Dividends

The company narrowed its 2008 earnings guidance to $1.17 to $1.20 per diluted share from its initial range of $1.17 to $1.23 per diluted share to reflect lower than planned third quarter contributions from its event clean-up business and its new thermal desorption recycling service in Texas. Nonetheless, it declared a dividend of $3.3 million, reflecting a 20% increase approved by its Board of Directors in May 2008.

Stock Repurchase Program

In late October, American Ecology announced that the company's Board of Directors has authorized a program to repurchase up to 600,000 shares, or about 3%, of its outstanding common stock. Unless extended, canceled or modified by the board, the program will remain in effect until December 31, 2008. "This opportunistic repurchase authorization is a direct reflection of current market volatility combined with American Ecology's strong financial condition and continued growth prospects," commented Romano. The authorization does not obligate American Ecology to acquire any particular amount of common stock.

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

Northwest Compact/State of Utah

Energy*Solutions* Reduces Guidance After Adverse NRC Decision

In mid-October 2008, Energy*Solutions* reduced its FY 2009 earnings guidance due to an adverse decision by the U.S. Nuclear Regulatory Commission.

At issue is a closed nuclear power plant owned by Exelon Generation Company in Zion, Illinois. Energy*Solutions* entered into an agreement with Exelon to perform decommissioning work at the plant, but needs the release of trust funds to remove "major components" from the site. A major or large component includes parts of a nuclear facility that require special handling with a weight of more than 20,000 pounds.

In order to perform the agreed upon activities, Energy*Solutions* requested that NRC change a rule to allow the use of decommissioning trust funds to clean-up "major radioactive waste components that have been removed from operating nuclear reactors." NRC recently issued its decision declining to make the requested rule change.

Following the adverse agency decision, Energy*Solutions* reduced its earnings guidance. For 2008, guidance is now 50 to 60 cents per share, or 70 to 80 cents before the amortization of intangibles. The company stated that earnings in 2009 are expected to be flat with 2008.

Energy*Solutions* provides nuclear services to governments, utilities and other entities that own nuclear power and research facilities in the United States. Services include cleaning up radioactive waste and contaminated locations, demolition and decommissioning of sites, and project planning of new facilities. Energy*Solutions* began trading publicly on the New York Stock Exchange under the ticker symbol ES on November 15, 2007.

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

Southeast Compact/State of Georgia

Safety Evaluation Issued for Vogtle ESP

On November 18, 2008, the U.S. Nuclear Regulatory Commission announced the issuance of a safety evaluation report (SER) for a requested Early Site Permit (ESP) and Limited Work Authorization (LWA) at the Vogtle site—which is located approximately 25 miles southeast of Augusta, Georgia. Under the ESP process, an applicant may address site-related issues, such as environmental impacts, for possible future construction and operation of a nuclear power plant at the site.

Southern Nuclear filed the Vogtle ESP application on August 15, 2006. Southern filed a related LWA request on August 16, 2007 seeking permission for construction activities limited to a placement of engineered backfill, retaining walls, lean concrete, mudmats, and a waterproof membrane.

In a separate review, the NRC is considering Southern's application for a combined license to build and operate two AP1000 reactors on the Vogtle ESP site. (See related story, this issue.) Southern currently operates two reactors on land adjacent to the site.

The 800-page SER contains the agency's review of Southern's ESP and LWA applications. The NRC staff reviewed information on

- site seismology, geology, meteorology and hydrology;
- risks from potential accidents resulting from operation of a nuclear plant at the site;
- the site's ability to support adequate physical security for a nuclear plant; and,
- proposed major features of the emergency plan Southern would implement if reactors are eventually built at the site.

NRC's Advisory Committee on Reactor Safeguards reviewed the SER during their December 2008 meeting and may suggest changes before the staff finalizes the report. In addition, the Atomic Safety and Licensing Board must conclude a hearing on the application before the agency's final decision on the Vogtle ESP, which is currently expected in late 2009.

The report is available electronically for public inspection in the NRC Public Document Room in Rockville, Maryland, as well as on the NRC's web site at http://www.nrc.gov/reactors/new-reactors/esp/vogtle.html. Information on the new reactor licensing process is available on the NRC web site at http://www.nrc.gov/reactors/new-reactors.html.

Southeast Compact/Commonwealth of Virginia

Virginia Seeks to Become Agreement State

Virginia Governor Timothy Kaine has filed a request with the U.S. Nuclear Regulatory Commission to assume part of the agency's regulatory authority over certain nuclear materials in the commonwealth. If the request is accepted, Virginia will become the 36th state to sign such an agreement with the NRC.

Under the proposed agreement, NRC would transfer to Virginia the responsibility for licensing, rulemaking, inspection and enforcement activities for:

(1) radioactive materials produced as byproducts from the production or utilization of special nuclear material (SNM—enriched uranium or plutonium);
(2) naturally occurring or accelerator-produced byproduct material (NARM);
(3) source material (uranium and thorium); and,
(4) SNM in quantities not sufficient to support a nuclear chain reaction.

If the proposed agreement is approved, it is estimated that there will be 420 total licenses in the Commonwealth of Virginia. NRC would transfer 386 licenses to the commonwealth's jurisdiction. In addition, the commonwealth would retain regulatory authority for approximately 216 NARM licenses. Virginia and the NRC dually regulate approximately 180 of these NARM licenses.

By law, NRC would retain jurisdiction over commercial nuclear power plants and federal agencies using certain nuclear material in the state. In addition, NRC would retain authority for the review, evaluation and approval of sealed radioactive materials and devices containing certain nuclear materials within the state.

Prior to entering into such an agreement, NRC must determine that Virginia's radiation control program is adequate to protect public health and safety, and is compatible with the agency's own program for regulating the radioactive materials covered under the agreement.

NRC will publish the proposed agreement, as well as the agency's draft assessment of the Virginia program, for public comment in the *Federal Register*. In addition, copies of the proposed agreement, the Governor's request, and supporting documents—as well as the draft assessment—are available through NRC's Agency-wide Documents Access and Management System (ADAMS).

To date, thirty-five states have signed such agreements with the NRC including: Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Washington and Wisconsin.

For additional information on the NRC's Agreement State program, please go to http://nrc-stp.ornl.gov/.

Texas Compact/State of Texas

TCEQ Files Response to Comments and Proposed Revised Draft LLRW License

On December 2, 2008, the Executive Director of the Texas Commission on Environmental Quality (TCEQ) filed a Response to Public Comments and a Proposed Revised Draft License related to Waste Control Specialists' (WCS) license application for near-surface disposal of low-level radioactive waste at the company's site in Andrews County, Texas.

Recently, on November 19, 2008, the TCEQ formally asked the Texas Attorney General's office to begin mineral rights condemnation proceedings to ensure that the state requirement for acquisition of all mineral rights at the disposal site is met. (See related story, this issue.)

The Documents

The documents clarify the types of waste that may be accepted at the proposed facility—including all waste streams identified in the original license application except certain depleted uranium (DU) waste streams over 10 nanicuries per gram and uranium hexafluoride (UF6) from deconversion facilities—as well as environmental monitoring requirements and operational issues regarding length of time for storage.

NRC staff recently made public a paper (SECY-08-0147) providing staff analysis and recommendations regarding the impacts of near-surface disposal of large quantities of DU. The paper, which is dated October 7, 2008, is currently being reviewed by the Commission. (See related story, this issue.) If and when NRC establishes federal guidelines for the management of DU and UF6 waste streams, WCS may opt to submit additional information in the form of a requested future license amendment to be in compliance with the new guidelines.

WCS Response

In a press release dated December 3, WCS praises TCEQ's actions as the latest development in moving the draft license closer to final approval.

"WCS is pleased with the response to comments made by the Executive Director to the draft license," stated WCS President Rodney Baltzer. "WCS views the Executive Director's response as a critical step that will facilitate TCEQ's approval and issuance of a final LLRW license that fully protects human health and the environment while strengthening TCEQ oversight of our facility and its operations … WCS is grateful to the Executive Director and his staff for working through these technical issues. The intent behind the license conditions are now clearly spelled out."

License Application Status

On August 11, 2008, 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 WCS' license application for near-surface disposal of low-level radioactive waste at the company's site in Andrews County, Texas. (See *LLW Notes,* July/August 2008, pp. 1, 10-11.) TCEQ held a public meeting on the matter 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.)

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

To view copies of TCEQ's Response to Comments and Proposed Revised Draft License, please go to http://

www.tceq.state.tx.us/permitting/radmat/licensing/wcs_license_app.html. For additional information, please contact Beryl Thatcher of TCEQ at bthatche@tceq.state.tx.us or at (512) 239-6466 or Rickey Dailey of WCS at (512) 708-8655.

Texas Compact Commissioners Named

On November 25, 2008, Texas Governor Rick Perry (R) announced appointments to the Texas Low Level Radioactive Waste Disposal Compact Commission ("Texas Commission"). The Texas Commission, which was created pursuant to Senate Bill 1206 in the 73rd Legislature, was established to provide for the management and disposal of low level radioactive waste while maintaining the priority of the health, safety and welfare of the citizens of Texas.

Michael Ford of Amarillo was named as Chairman and John White of Plano was named as Vice Chairman. Both terms are set to expire on November 25, 2014. In addition to Ford and White, Governor Perry appointed four other members to the Texas Commission including Richard Dolgener, Bob Gregory, Kenneth Peddicord, and Robert Wilson.

Chairman and Vice-Chairman

Michael Ford, who received a Bachelor's Degree and a Master's Degree in health physics from Texas A&M University, is a program manager at B&W Pantex LLC. He is a certified health physicist, and a member of the Health Physics Society and Tau Beta Pi National Engineering Honor Society. He is also a member and Chairman of the Texas Radiation Advisory Board (TRAB).

John White, who received a Bachelor's Degree from the University of Texas at Arlington, is the Radiation Safety Officer at the University of Texas Southwestern Medical Center at Dallas. He is a member and Past-President of the South Texas Chapter of the Health Physics Society Board of Directors, and a member of the Society of Nuclear Medicine and American Mensa. In addition, he is a radiological emergencies volunteer with the Medical Reserve Corps and a trainer with the National Disaster Life Support Foundation.

Additional Members

Richard Dolgener of Andrews County is a judge in Andrews County—the location of the proposed low-level radioactive waste disposal facility for the Texas Compact. He is a member of the Texas Association of Counties, West Texas County Judges and Permian Basin Regional Planning Commission. He attended the University of Texas at the Permian Basin.

Bob Gregory of Austin is President of Texas Disposal Systems. He is a member of the National Solid Wastes Management Association, Young Presidents Organization, and Solid Waste Association of North America. He is also a past member of the Municipal Solid Waste Management and Resource Recovery Advisory Council that advises the Texas Commission on Environmental Quality about waste management regulations. He received a Bachelor's Degree from the University of Texas at Austin.

Kenneth Peddicord of College Station is an engineer and Director of the Texas Engineering Experiment Station. He is also Senior Associate Dean of Research and a professor of nuclear engineering at Texas A&M's Dwight Look College of Engineering. He serves as a consultant for Pacific Northwest National Laboratories, Lawrence Livermore National Laboratory and Los Alamos National Laboratory. He is a member of the American Nuclear Society, American Society of Mechanical Engineers and American Society for Engineering Education. He received a Bachelor's Degree from the University of Notre Dame, and a Master's and Doctorate Degree in nuclear engineering from the University of Illinois.

Robert Wilson of Lockhart is a partner at Jackson, Sjoberg, McCarthy & Wilson LLP. He is a member of the State Bar of Texas, Caldwell County Bar Association, University of Texas School of Law Environmental Law Clinic Advisory Board, Health Physics Society, Texas Water Conservation Association, and Texas Mining and Reclamation Association, and an associate member of the State Conference of Radiation Control Program Directors. He received a Bachelor's Degree and Juris Doctorate from the University of Texas at Austin.

License Application Status

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 Waste Control Specialists' (WCS) license application for near-surface disposal of low-level radioactive waste at the company's site in Andrews County, Texas. (See *LLW Notes*, July/August 2008, pp. 1, 10-11.) TCEQ held a public meeting on the matter 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.)

For additional information on WCS license application, please go to the TCEQ web page at http://www.tceq.state.tx.us/permitting/radmat/licensing/wcs_license_app.html or contact the Radioactive Materials Division at (512) 239-6466.

For additional information, please contact Allison Castle or Katherine Cesinger of the Governor's press office at Allison.castle@governor.state.tx.us or kcesinger@governor.state.tx.us or at (512) 463-1826.

NRC Comments re WCS Land Ownership Exemption Request

By letter dated August 22, 2008, the Texas Commission on Environmental Quality (TCEQ) notified the U.S. Nuclear Regulatory Commission (NRC) of its intention to grant an exemption from the government land ownership requirements in 30 TAC 336.734(a) for Waste Control Specialist's (WCS) proposed low-level radioactive waste disposal facility in Andrews County, Texas.

NRC's Office of Federal & State Materials & Environmental Management Programs recently responded via letter dated October 28, 2008. In the letter, NRC discusses compatibility requirements and other factors for consideration.

Background

10 CFR Part 61 requires state or federal government ownership of land for a low-level radioactive waste site *before* the issuance of a license. Although 30 TAC 336.734 contains a similar provision, 30 TAC 336.909 allows for the government to assume ownership *at the time of decommissioning.*

By letter dated January 22, 2004, NRC provided TCEQ with the results of its compatibility review of revisions to the Texas Low-Level Radioactive Waste Disposal Rules in Title 30 of the Texas Administrative Code. The provision for government land ownership of the federal facility portion of the proposed low-level radioactive waste disposal facility was identified as the one remaining outstanding issue. NRC determined that compatibility of TCEQ regulations would not be an issue, however, until the filing of an exemption request from 30 TAC 336.734.

Similar Exemption

In 1993, the State of Utah granted an exemption from the government land ownership requirements to Energy*Solutions*' predecessor—Envirocare of

Utah. In that case, the license had no requirement for government ownership of the site at any time. Nonetheless, NRC determined that the exemption provided adequate controls so that the objectives of the land ownership requirement could be achieved without actual government ownership.

NRC's Analysis

NRC's October 2008 letter states that "Texas is free to grant an exemption to its own regulations, but any exemption must meet the criteria" in 30 TAC 336.5—which NRC has determined are compatible with exemption provisions contained in the agency's own regulations. 30 TAC 336.5 states that the exemption must not be "… prohibited by law," and is to be "… at least as protective of the environment and the public health as the method prescribed by Commission [TCEQ] rules that would otherwise apply."

NRC's government land ownership requirement is "primarily aimed at the long-term control of the site, with the premise that the government is likely to outlast private entities." It is intended to ensure "that a responsible entity will be available to perform custodial care and to restrict access to the site during the post closure institutional control phase."

In the case at hand, WCS has proposed that the federal government would take ownership of the land for the federal facility at the time of decommissioning, instead of at the time of license issuance. The draft license issued by TCEQ, however, prohibits the disposal of federal facility waste at the WCS site until the U.S. Department of Energy provides an acceptable written agreement stating that the federal government will assume all right, title and interest in land and buildings for the disposal of federal facility waste in accordance with 30 TAC 336.909(2) and at the time of decommissioning.

Thus, although the government will not own the land during the operations, closure and post closure phases, it would take ownership at the time that the post closure phase ends and the 100 year institutional control period begins. WCS' application presents a case for demonstrating the control of access to the site during these pre-institutional control phases through the presence of WCS personnel on the site, periodic inspections by TCEQ, and restrictive covenants for the property.

NRC's letter states that "[t]heoretically, private ownership of the facility up to the beginning of the institutional control period would appear to be able to meet the essential objectives of the government land ownership provisions of Part 61." The letter goes on to state, however, that adequate assurance that the federal government will take ownership at a later time must be demonstrated.

Conclusions and Next Steps

NRC's October 2008 letter states that the agency has reconfirmed that the Texas regulations, as adopted, meet NRC's compatibility and health and safety requirements. Moreover, NRC believes "that the general approach proposed by WCS for private ownership during the phases before the institutional control period can be consistent with the objectives of the government ownership requirements given appropriate circumstances." Accordingly, NRC has determined that TCEQ is not precluded from considering an appropriate exemption.

NRC intends to review the implementation details of this exemption approval to ensure that it is adequate to protect public health and safety when the agency performs its next Integrated Materials Performance Evaluation Program (IMPEP) review of the Texas program. The IMPEP uses common criteria in the assessment and places primary emphasis on performance. The specific performance indicator on the low-level radioactive waste disposal program consists of five sub-elements, including the Technical Quality of Licensing Actions. NRC notes that the "granting of an exemption to the institutional requirements as proposed should be based on addressing the health and safety issues and would be factored into a finding of adequacy for the program and not compatibility as indicated in the [agency's] January 22, 2004, letter."

NRC is currently scheduled to perform its next IMPEP review of the Texas program in 2010.

Additional Comment re Depleted Uranium

Condition 47 in the draft license issued to WCS by TCEQ states as follows:

> The Licensee shall not receive or dispose of any waste with physical, chemical, and radiological characteristics not evaluated in the application. The Licensee shall not receive or dispose uranium hexafluoride (UF6) conversion waste, depleted uranium or similar waste. In order to accept any additional waste streams, information on complete waste profiles, radionuclide information, total radioactivity, radionuclide concentrations, chemical constituents, and analysis of any impacts to members of the public and the environment must be submitted as an application for amendment to this license.

NRC's October 2008 letter states that this condition "is consistent with recent Commission direction to the NRC staff to consider whether the quantities of DU in the waste stream from uranium enrichment facilities warrant additional measures to ensure protection of public health and safety." (See related story, this issue.)

NRC states that it will notify TCEQ when the staff paper is finalized and available for public review. After staff receives Commission direction, they can discuss the relevance, if any, of the Commission decision on this issue to TCEQ's path forward.

For additional information, please contact Jim Kennedy of NRC at (301) 415-6668 or Susan Jablonski of TCEQ at (512) 239-6466.

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2010 meeting at a location to be determined within the state.

2011 Meetings and Beyond

The LLW Forum is currently seeking volunteers to host the 2011 meetings and those thereafter. Although it may seem far off, substantial lead-time is needed to locate appropriate facilities.

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

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

Opposition to and Cross-Motions for Summary Judgment Filed in Suit Challenging Northwest Compact's Authority

On October 21, 2008, the Northwest Interstate Compact on Low-Level Radioactive Waste Management and the Rocky Mountain Low-Level Radioactive Waste Compact (hereinafter collectively referred to as "the defending compacts") filed a joint Memorandum in Opposition to Energy*Solutions*' Motion for Summary Judgment, as well as a Cross-Motion for Summary Judgment, in litigation between the parties. The State of Utah filed a separate, independent Opposition Memorandum and Cross-Motion on the same date.

The lawsuit—which was initiated on May 5 of this year—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.)

Although the lawsuit was initially filed against the Northwest Compact and its Executive Director, Michael Garner, solely in his official capacity, the court recently granted unopposed motions by the State of Utah and the Rocky Mountain Compact to intervene in the action as defendants. (See *LLW Notes*, September/October 2008, pp. 12-14.)

EnergySolutions' Motion for Summary Judgment

Energy*Solutions* is seeking summary judgment only on Count One of its Complaint—whether the Northwest Compact has the authority to restrict the flow of low-level radioactive waste to the Clive facility. Energy*Solutions* is not seeking summary judgment with regard to the issues addressed in Count Two and Count Three of the Complaint—whether NRC's regulatory authority to license the import and export of byproduct and nuclear materials is preemptive and whether the Northwest Compact's actions amount to unauthorized discrimination against foreign commerce under the dormant Commerce Clause of the U.S. Constitution.

Main Arguments Energy*Solutions* raises two main arguments in support of its motion for summary judgment:

(1) The Compact's Effort to Block the Clive Facility's Receipt of Foreign Waste Exceeds the Compact's Authority Under the Low-Level Radioactive Waste Policy Act ("LLRW Act"):

Energy*Solutions* argues that the Northwest Compact's efforts to prohibit the Clive facility from receiving the Italian waste is based solely on origin and therefore discriminatory. The company contends, "Congress has never authorized the Compact to treat foreign waste less favorably than otherwise-identical domestic waste." Accordingly, Energy*Solutions* asserts that the compact has violated the "dormant" component of the Commerce Clause of the U.S. Constitution. In short, the dormant Commerce Clause has been interpreted to "invalidate local laws that impose commercial barriers or discriminate against an article of commerce by reason of its origin or destination out of State" or outside the United States unless otherwise authorized by Congress. According to Energy*Solutions*, "Congress has never authorized the Compact to restrict the Clive Facility's receipt of *any* waste—whether foreign or domestic—because the Clive Facility is not a 'regional disposal facility' under the LLRW Act, and therefore is not subject to the Compact's authority."

(2) The Clive Facility is Not a "Regional Disposal Facility" and Therefore is Not Subject to the Compact's Authority:

Energy*Solutions* argues that the authority that compacts derive from the LLRW Act to restrict the flow of waste within their regions is limited only to "regional disposal facilities" and does not extend to other entities that, like the Clive facility, cannot be characterized as a "regional disposal facility." Energy*Solutions* contends that Clive is not a "regional disposal facility" as defined in the 1985 Act because, among other things, the compact was not involved in chartering or establishing the facility, the facility is privately owned, and the compact has no role in the licensing or health and safety inspections or protocols for the facility. In addition, an Energy*Solutions'* official states:

> [I]f Clive were a regional disposal facility, it would enjoy the same monopolistic benefits given to the Northwest Compact's regional facility in Hanford … [T]here are certain financial benefits gained by being a regional disposal facility, and Clive receives none of these. Prices are set, wastes must be sent to the regional compact facility, etc.

Finally, Energy*Solutions* argues that even if the Northwest Compact's Charter can be read to authorize the compact to restrict the flow of waste to the Clive facility, the LLRW Act circumscribes the Charter. "Congress has made clear," argues Energy*Solutions*, "that any inconsistencies between the Charter and the LLRW Act must be resolved in favor of the LLRW Act."

Summary of Arguments Energy*Solutions* summarizes its arguments as follows:

> … [T]he LLRW Act cannot be construed to authorize the Compact to exclude out-of-region waste from any LLRW site that, like the Clive Facility, does not qualify as a "regional disposal facility." And considering the history of the Compact's Charter, the conditional language used by Congress in consenting to the Charter, and the text of the 1985 Amendments, it is clear that Congress did not intend to expand the Compact's exclusionary authority to include all LLRW sites that might fit within the Charter's broad definition of the term "facility." Instead, Congress intended to limit the Compact's authority to the establishment and operation of a "regional disposal facility," as that term is defined by the LLRW Act. Any other interpretation would ignore Congress's mandate that inconsistencies between the Charter and the LLRW Act are to be resolved in favor of the LLRW Act.
>
> Operating without the benefit of the 1985 Amendments, those who drafted the Charter adopted a broad definition of "facility." That definition, however, was necessarily subsumed within the LLRW Act when Congress enacted the 1985 Amendments, and remains valid only insofar as it is consistent with the LLRW Act's limited grant of authority over "regional disposal facilities." Consequently, any effort by the Compact to restrict the Clive Facility's receipt of out-of-region waste (foreign or domestic) exceeds the Compact's authority to discriminate against LLRW generated outside the Compact region.

Additional Contention A footnote in Energy*Solutions* motion also contends that the Northwest Compact has never excluded waste from the Clive facility and that the compact may not discriminate against foreign-generated waste based on its origin.

> Even if the Clive Facility could somehow be treated as a "regional disposal facility" for purposes relevant to this case (to be sure, it cannot), the Northwest Compact's attempt to exclude foreign waste from the Clive

> Facility would still violate the dormant Commerce Clause because (a) the Compact has never objected to the Clive Facility's receipt of waste generated by other States outside the Compact region, (b) the Italian waste at issue is scientifically indistinguishable from domestic LLRW received by the Clive Facility, and (c) the Compact's attempted ban of Italian LLRW is based solely on its origin outside the United States. Congress has never authorized any compact to treat foreign LLRW less favorably than otherwise-identical domestic LLRW (based solely on the former's foreign origin), and the dormant Commerce Clause forbids it from doing so.

The footnote states that Energy*Solutions* is not addressing this argument for summary judgment purposes, but may file a separate motion addressing the compact's alleged disparate treatment of foreign waste if the court were to conclude that the Clive facility could be regulated as a "regional disposal facility."

For a detailed overview of the lawsuit and EnergySolutions' arguments, see LLW Notes, May/June 2008, pp. 25-28.

Defending Compact's Opposition Memorandum & Cross-Motion

Main Arguments In their memorandum in opposition to Energy*Solution's* request for summary judgment and in support of their own cross-motion for summary judgment, the defending compacts offer the following four arguments:

(1) The Northwest Compact Itself Provides the Legal Basis to Restrict Disposal at the Clive Facility:

In support of this argument, the defending compacts assert that the U.S. Constitution provides authority for two or more states to enter into binding agreements, called "compacts." The U.S. Supreme Court, they note, has held that Congressional consent to compacts "transforms the State's agreement into federal law." Accordingly, the defending compacts assert that Congressional consent to the Northwest Compact, and in particular Articles IV and V thereof, has given the Northwest Compact Committee the authority to exclude out-of-region waste from its region, including the Clive facility.

(2) The Northwest Compact Committee Derives its Exclusionary Authority from the Compact Itself, Not from the Low-Level Radioactive Waste Policy Amendments Act ("the 1985 Act"):

The defending compacts dispute any argument by Energy*Solutions* that the 1985 Act constitutes a grant of authority to the Northwest Compact Committee to restrict access to in-region disposal facilities. Instead, they assert that the Committee's authority comes solely from the Northwest Compact itself. The 1985 Act, they contend, "merely established the timing and conditions under which access to regional facilities could be restricted during the so-called 'transition period.'"

(3) The Northwest Compact Committee is Authorized under Articles IV and V of the Compact to Limit the Access for Out-of-Region Waste to the Clive Facility:

In their opposition memorandum, the defending compacts state that, pursuant to the terms of the Northwest Compact, outside low-level radioactive waste is presumed to be excluded from the region and must receive approval from the Northwest Compact Committee for entry and disposal. Although Energy*Solution's* briefs argue that the Clive facility is a private commercial facility, the defending compacts assert that this does not change the analysis. In support of this contention, they point out that all three of the disposal sites described in the 1985 Act are private commercial facilities and are licensed and regulated by the states in which they are located pursuant to agreements with the U.S. Nuclear Regulatory Commission. Therefore, they contend, "the fact that Energy*Solutions* operates 'a private commercial facility' is of no legal significance for purposes of this motion, or the authority of the Northwest

Compact over the Clive Facility." The defending compacts also stress that Articles IV and V of the Northwest Compact provide that no facility in any party state may accept waste from outside of the region without an arrangement from the Northwest Compact Committee and that the committee recently adopted a clarifying resolution that foreign-generated waste is currently prohibited.

(4) The Clive Facility Qualifies as a "Regional Disposal Facility" Under the 1985 Act:

While disputing Energy*Solutions*' assertion that the Northwest Compact's authority is restricted to facilities that meet the definition of a "regional disposal facility" under the 1985 Act, the defending compacts argue that the Clive facility is indeed a regional facility nonetheless. In this regard, they argue that the 1985 Act does not mandate that a compact designate a single "regional disposal facility," nor does the act or compact mandate express designation of such facilities. Moreover, the defending compacts contend that Energy*Solutions* and its predecessor have "implicitly acknowledged" the compact's authority by complying with a series of resolutions and orders since 1992 and by submitting monthly reports to the compact regarding the types and quantities of waste accepted for disposal at Clive.

Summary of Arguments The defending compacts summarize their argument as follows:

> As a matter of law, the Clive Facility is a "facility" within the meaning of the Northwest Compact, which was consented to by Congress, and thus constitutes federal law. As a result, the Clive Facility is subject to the Committee's authority, under Articles IV and V of the Northwest Compact, to restrict disposal within the Compact region of any low-level radioactive waste generated outside it—including any such waste coming from outside the United States. Even if the provisions of the Northwest Compact were not enough, the Clive Facility is also a "regional diposal facility" under the 1985 Act, because it was established after January 1, 1985, and since 1991 has operated under the Northwest Compact's authority. Therefore, the Clive Facility is subject to the Northwest Compact, and the Committee has the authority to preclude foreign waste from being disposed of in the Compact region.

Additional Contention In addition, a declaration from Mike Garner that accompanies the defending compact's opposition memorandum denies, among other things, Energy*Solutions*' assertion that the Northwest Compact has never objected to the disposal of out-of-region waste at the Clive facility. Indeed, the declaration cites at least two separate instances in which the Northwest Compact Committee denied access or allowed one-time access to the Clive facility in the past.

State of Utah's Opposition Memorandum & Cross-Motion

Main Arguments In its memorandum in opposition to Energy*Solution's* request for summary judgment and in support of its cross-motion for summary judgment, the State of Utah offers the following three arguments:

(1) As the Northwest Compact is Federal Law, the Compact's Exclusionary Authority is Not Subject to the Dormant Commerce Clause:

Utah rejects Energy*Solutions*' claim that the Northwest Compact may not exceed authority granted by the Low-Level Radioactive Waste Policy Act ("LLRWPA") without violating the dormant Commerce Clause. "That argument fails," asserts the state, "because Congress has approved the Compact making it federal law and thereby granting it exclusionary authority over any non-federal facility, including the Clive facility, for the receipt of low-level radioactive waste, whether its origin is foreign or domestic." Utah goes on to argue "congressional power here is not dormant because Congress has explicitly given its approval to all of

the Compact provisions, including the exclusionary provisions." Energy*Solutions*' argument to the contrary is, according to the state, based upon an improper attempt to limit the compact's authority to language contained exclusively in Title I of the LLRWPA for "regional disposal facilities." As Title I and Title II of the LLRWPA were passed at the same time, however, the state argues that the language must be harmonized to give meaning to all of the words approved by Congress.

(2) The Compact Derives its Authority from the Interstate Compact Consent Act, the Federal Law that Approved the Compact:

Utah contends that Energy*Solutions* "misconstrues the derivation of the Compact's authority" by claiming that it arises out of the LLRWPA. Instead, the state asserts that the compact's authority derives from the language of the compact itself, "as consented to by Congress, and thereby making the Compact federal law." Since Clive meets the definition of a "facility" under the compact, Utah contends that it is therefore subject to all of the associated provisions and restrictions, including the compact's exclusionary authority, as contained in Articles IV and V of the compact itself.

(3) Without Initial and Continuing Compact Approval, the Clive Facility Would Not Exist as a LLRW Disposal Facility:

In its final argument, Utah asserts that Energy*Solutions*' operations have been at the behest of the compact.

> Energy*Solutions* argues that it is not a regional disposal facility and therefore "the compact has acted unlawfully in attempting to prohibit the Clive facility from receiving foreign waste." What Energy*Solutions* fails to mention is that the Clive facility would not even be an authorized disposal facility for low-level radioactive waste, had it not met Utah's original license condition requiring Compact approval, and had it not received Compact approval in 1991, and on numerous other occasions over the last 17 years. As such, Energy*Solutions* has operated under the authority of the Compact since it first began accepting low-level radioactive waste in 1991. (citations omitted)

In addition, Utah points out that the state has consistently recognized the compact's authority over the Clive facility and asks the court to consider the significant ramifications that may ensue if such authority is invalidated. According to the state, potential ramifications may include threats to the viability of the Hanford facility and the entire low-level radioactive waste compact system, as well as challenges to Utah's authority to restrict the disposal of Class B and C waste at Clive.

Summary of Argument Utah summarizes its argument as follows:

> Utah joined the Compact and has been eligible for and received the benefits of being a member of the Compact for the last 17 years. Energy*Solutions,* whose Clive facility exists only because the State of Utah and the Compact approved its existence, is now attempting to by-pass valid policy decisions authorizing Utah's participation in the Compact. Rather than seeking a legislative solution, Energy*Solutions* is instead twisting federal law, attempting to obtain judicial relief, so it can import any wastes it chooses, over the objections of the State of Utah and the Northwest Compact and contrary to the authorities, purposes and policies established under federal law. It threatens the State of Utah's rights established under federal law and Compact authority to receive the benefits of being able to dispose of its waste in the Compact's Washington facility and to exercise the State of Utah's valid rights to control low-level

> radioactive waste that are being disposed of in Utah. (citations omitted)

Additional Contention Utah's opposition memorandum contains a footnote arguing that "by briefing its dormant Commerce Clause argument in its Summary Judgment Motion on Count I, Energy*Solutions* is attempting to brief Count III of the amended complaint (claim for Declaratory Judgment for violation of the dormant Commerce Clause), while at the same time preserving its ability to brief Count III at a later date should the Court deny its summary judgment motion on Count I." Accordingly, the state contends that a decision in favor of the defendants on Count I "would, in essence, be determinative of a decision in favor of those same defendants on Count III."

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.

The Rocky Mountain Compact has a contract with the Northwest Compact and the State of Washington for the disposal of commercial Class A, B and C low-level radioactive waste at the compact's regional disposal facility in Richland, Washington. In 2005, the State of Washington and US Ecology agreed to incorporate a clause in the new sublease for the Richland disposal facility that allows the state to terminate the sublease if the Northwest Compact loses exclusionary authority on out-of-region low-level radioactive waste provided by federal law.

For additional information, please contact Tye Rogers, Vice President of Compliance and Permitting at EnergySolutions, at (801) 649-2000; Michael Garner, Executive Director of the Northwest Compact, at (360) 407-7102; Bill Sinclair, Deputy Director of the Utah Department of Environmental Quality, at (801) 536-4405; or Leonard Slosky, Executive Director of the Rocky Mountain Compact, at (303) 825-1912.

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

Energy*Solutions* Files Reply Briefs re Summary Judgment Motions in Suit Challenging Northwest Compact's Authority

On November 7, 2008, Energy*Solutions* filed a Reply Memorandum in support of its own Motion for Summary Judgment and in opposition to the defendants' Cross-Motions for Summary Judgment on Count One of its lawsuit regarding the Northwest Compact's authority over the Clive facility.

The lawsuit—which was initiated on May 5 of this year—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.)

Although the lawsuit was initially filed against the Northwest Compact and its Executive Director, Michael Garner, solely in his official capacity, the court recently granted unopposed motions by the State of Utah and the Rocky Mountain Compact to intervene in the action as defendants. (See *LLW Notes*, September/October 2008, pp. 12-14.)

Energy*Solutions* filed its Motion for Summary Judgment on September 4, 2008. The defending compacts and Utah filed separate Opposition Memorandums and Cross-Motions for Summary Judgment on October 21, 2008. (See related story, this issue.)

For background information on the lawsuit and a brief overview of the arguments put forth by EnergySolutions in its summary judgment motion, as well as those put forth by the defending compacts and Utah in their opposition memorandums and cross-motions, please see related story, this issue.

The Compact's Authority Cannot be Construed to Authorize Discriminatory Conduct Not Contemplated Under the LLRW Act

In its first argument, Energy*Solutions* challenges the defendants' assertion that the Northwest Compact's authority to discriminate against out-of-region waste derives from the Northwest Compact Charter rather than the Low-Level Radioactive Waste Policy Act ("LLRW Act") by contending that (1) a provision in the LLRW Act defines the outer limits of the compact's authority to engage in conduct that would otherwise be prohibited by the dormant Commerce Clause, and (2) to the extent that the Charter might be read to grant the compact authority over a disposal site that is not a regional disposal facility, the Charter is inconsistent with the LLRW Act and that inconsistency must be resolved in favor of the LLRW Act.

(1) The Defendants' Interpretation of the Charter is Precluded by the LLRW Act

To advance its position, Energy*Solutions* points to a provision in the LLRW Act that states that nothing contained in "…*any compact* may be construed to limit the applicability of any Federal law … or to alter, amend, or otherwise affect any Federal law concerning the judicial review of any action taken pursuant to any compact." 42 USC 2021d(b)(4) (emphasis added). Energy*Solutions* argues that this provision means that the Northwest Compact's Charter can be construed to limit the applicability of federal law only to the extent that such a limitation is set forth in the LLRW Act. Since the dormant Commerce Clause is unquestionably federal law, Energy*Solutions* asserts that regardless of what the Northwest Compact Charter appears on its face to authorize, it cannot be construed to limit the applicability of the dormant Commerce Clause "[e]xcept as expressly provided in" the LLRW Act itself. Since Energy*Solutions* contends that nothing in the LLRW Act expressly provides authority to discriminate against out-of-region low-level radioactive waste destined for a "non-regional" disposal facility, the company therefore argues that the Northwest Compact has no authority to restrict access to the Clive facility.

(2) The Consent Act's Conditional-Approval Clause Applies Notwithstanding Congress' Approval of the Charter

Energy*Solutions* also disputes the defendants assertion that the Consent Act's conditional-approval clause was intended only to reinforce the compact's obligation to accept out-of-region waste until 1993, pursuant to the LLRW Act's phase-in provisions, and was not intended to affect the construction of the Northwest Compact Charter after the phase-in period. Indeed, the company asserts that the text, structure, and history of the conditional-approval clause demonstrate that Congressional approval of the Northwest Compact's Charter cannot be read to eviscerate limitations imposed thereon by the LLRW Act because (1) the conditional-approval clause makes no distinction, explicit or otherwise, between the phase-in provisions and other sections of the LLRW Act, (2) Congress determined that inconsistencies between the Charter and the LLRW Act would be resolved in favor of the latter, and (3) nothing in the Consent Act obviates its mandate to reconcile the Charter with the LLRW Act.

The Northwest Compact and State of Utah Have Acknowledged on Previous Occasions That the Clive Facility is Not a "Regional Disposal Facility"

In its second argument, Energy*Solutions* disputes the defending compacts' assertion in their October 21 memorandum that any low-level radioactive waste disposal site operating within a compact region qualifies as a "regional" disposal facility and is therefore subject to compact authority. Such an argument, according to Energy*Solutions,* (1) cannot be reconciled with the Northwest Compact's insistence in prior litigation that Clive is not a regional disposal facility, (2) is at odds with the text and history of the LLRW Act, and (3) finds no support in the fact that the parties have operated for many years under the unchallenged assumption that the Northwest Compact has authority to restrict the Clive facility's receipt of out-of-region waste.

(1) The Northwest Compact has Previously Argued that Clive is Not a Regional Disposal Facility

In 1992, US Ecology filed a lawsuit contending that the Northwest Compact and the states of Utah and Washington, among others, were violating the phase-in provisions of the LLRW Act by imposing certain surcharges on low-level radioactive waste received by the Richland facility, while failing to impose similar surcharges on such waste received at the Clive facility. Energy*Solutions* alleges that, in its response to the lawsuit, the Northwest Compact admitted an allegation by US Ecology that Clive is not a regional disposal facility under the LLRW Act. Energy*Solutions* also alleges that, in connection with a motion to dismiss that lawsuit, the Northwest Compact affirmatively and expressly stated that Clive is not a regional disposal facility by pointing out that the facility "was not in operation on January 1, 1985, *nor was it subsequently established and operated under a Compact."* (emphasis added). The State of Utah made similar statements in its motion to dismiss US Ecology's lawsuit, according to Energy*Solutions.* "Significantly, the State of Utah does not argue in this litigation that Clive is a regional disposal facility," states Energy*Solutions,* "perhaps because it recognizes that such an argument could not credibly be reconciled with its previous position."

(2) The Text and History of the LLRW Act Make Clear That Clive is Not a Regional Disposal Facility

Energy*Solutions* goes on to assert that the text and history of the LLRW Act make clear that Clive is not a "regional disposal facility," which is defined as "a non-Federal low-level radioactive waste disposal facility in operation on January 1, 1985, or subsequently established and operated under a compact." In support of its position, Energy*Solutions* points out that Clive was not in operation on January 1, 1985, and contends that it was not "subsequently established and operated under a compact." With regard to the latter issue, Energy*Solutions* asserts that, since 1991, the Northwest Compact's own resolutions have expressly acknowledged that it "has no authority and assumes no responsibility" for the operation of the Clive facility. Moreover, the company disputes any assertion that any site qualifying as a "facility" under the Northwest Compact Charter must also

qualify as "regional disposal facility" under the LLRW Act due to its proximity within the compact region. Such an interpretation, asserts Energy*Solutions*, is contrary to the LLRW Act's text and structure which evidence Congress' intention that a site not become a "regional disposal facility" simply by operating within a compact region, even if "the compact in question exercises (or purports to exercise) some degree of control over access to that site." Indeed, Energy*Solutions* asserts that Clive cannot be considered a "regional disposal facility" for the single reason that it "was established and has always been operated by a for-profit corporation (*i.e.*, a 'private concern'), and not under the auspices of the Compact."

(3) Prior Assumptions or Behavior Cannot Provide a Legal Basis for the Exercise of Governmental Authority

Energy*Solutions* also challenges as "flawed" any proposition by the defendants that the Northwest Compact has authority over the Clive facility because the parties to this litigation have allegedly operated for years under an assumption of such authority. "The Compact's right to exercise governmental authority over the Clive Facility either exists or its does not; it cannot be assumed into existence and then ratified by action in conformity with that assumption," states Energy*Solutions*. "Nor can it be created by acquiescence, as if by adverse possession." Instead, Energy*Solutions* contends, "such authority must be expressly granted by an unambiguous statement of congressional intent." As Energy*Solutions* alleges that no such statement can be found in the LLRW Act, the Consent Act, or in the Northwest Compact's Charter, the company argues that no such authority exists.

The LLRW Act Cannot Authorize the Compact to Restrict Clive's Receipt of Out-of-Region Waste Since the Facility Does Not Receive In-Region Waste

As a final argument, Energy*Solutions* states that Congressional intent and the purpose of the LLRW Act support its position that the Northwest Compact does not have authority over the Clive facility. "In enacting the LLRW Act and creating the compact system," argues Energy*Solutions*, "Congress limited the applicability of the dormant Commerce Clause for the specific purpose of encouraging States (acting through Compacts) to dispose of LLRW *on a regional basis.*" The company asserts that, authorizing the Northwest Compact to restrict the receipt of out-of-region waste at Clive would not serve that purpose since the facility does not receive any waste generated within the compact region. Any argument to the contrary, asserts Energy*Solutions*, is not "consistent with the policy objectives of the LLRW Act" and "would turn the LLRW Act on its head." Energy*Solutions* summarizes its argument as follows:

> The Clive Facility performs a function that, while important, does not advance the LLRW Act's stated purpose of promoting "the disposal of low-level radioactive waste … *on a regional basis.*" In that critical respect, the Clive Facility stands in sharp contrast to regional disposal facilities, the establishment of which Congress actively promoted by authorizing the compacts to "restrict the use of [their] regional disposal facilities … to the disposal of low-level radioactive waste *generated within the compact region.*" Accordingly, giving the Compact authority to exclude out-of-region waste from the Clive Facility would in no way advance—and would if anything undermine—the policy objectives that motivated Congress to authorize a limited purpose end-run around the dormant Commerce Clause. (citations omitted, emphasis added)

In conclusion, Energy*Solutions* requests that the court grant its Motion for Summary Judgment on Count I of the Amended Complaint and deny the defendant's Cross-Motions for Summary Judgment by entering an order (1) construing the word "facility," as it appears in the Northwest Compact's Charter, to be synonymous with the term "regional disposal facility," as defined by the LLRW Act, and (2) finding that the Clive facility is not a "regional

disposal facility" regulated by the Northwest Compact.

For additional information, please contact Tye Rogers, Vice President of Compliance and Permitting at EnergySolutions, at (801) 649-2000; Michael Garner, Executive Director of the Northwest Compact, at (360) 407-7102; Bill Sinclair, Deputy Director of the Utah Department of Environmental Quality, at (801) 536-4405; or Leonard Slosky, Executive Director of the Rocky Mountain Compact, at (303) 825-1912.

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

Court Dismisses Adams County's Suit Against Clean Harbors

On November 14, 2008, the District Court of Adams County in the State of Colorado issued an order granting a Motion for Summary Judgment filed by defendant Clean Harbors Deer Trail, LLC ("Clean Harbors"), and denying a Motion for Partial Summary Judgment filed by plaintiff Adams County Board of County Commissioners ("Adams County"), in litigation between the parties.

Since granting the defendant's motion effectively denies all relief being sought by the plaintiff, the court further determined that all pending motions are moot and vacated the pending trial and all associated hearings.

Background

Clean Harbors operates a hazardous waste disposal facility in eastern Adams County near the former town of Last Chance known as "Deer Trail." In September 2002, Clean Harbors submitted a Permit Renewal Application to the Colorado Department of Public Health and the Environment ("CDPHE") for renewal of the facility's 1998 State RCRA Permit. The application was revised in October 2004 to include a proposal to dispose of radioactive materials in excess of the 1998 State RCRA Permit limits.

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

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

Adams County's Complaint

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

Clean Harbors' Response

Clean Harbors responded to the litigation by arguing, among other things, that Colorado law does not require an additional or separate CD

before its facility can be authorized for the disposal of low-level radioactive waste. Instead, Clean Harbors contends that a prior CD authorizing the disposal of licensed materials and an agreement with Adams County regarding fees is sufficient. In addition, Clean Harbors asserts that the referenced Colorado statute contains no requirement enforceable against facilities, but rather mandates action by the Hazardous and Solid Waste Commission. And, finally, Clean Harbors argues that Adams County's authority over the facility is preempted because the legislature intended to occupy the field of regulation over the operations of facilities accepting radioactive materials and hazardous waste.

CDPHE Intervention

On November 15, 2007, CDPHE announced that the Colorado Attorney General's Office filed a motion on behalf of the department seeking to intervene as a co-defendant in the lawsuit because, among other things, Adams County's complaint "indirectly attacks" the Radioactive Materials License and Hazardous Waste Permit that CDPHE issued to the Deer Trail facility. In particular, CDPHE sought to challenge Adams County's assertion that the designation of a low-level radioactive waste disposal facility by the Rocky Mountain Compact requires a separate CD from the county. According to CDPHE, state statutes provide that the existing CD fulfills the requirement. The district court subsequently granted the motion and CDPHE joined in Clean Harbor's summary judgment motion.

District Court's Order

The district court determined that Clean Harbors did not violate the law and therefore determined to grant the defendant's motion for summary judgment.

Hazardous Waste Act and Adams County Regulations Adams County alleges that Clean Harbors violated the Hazardous Waste Act and Adams County's regulations. The district court, however, determined that the referenced laws only provide that a CD must identify the "general types of waste" to be accepted or rejected at a facility. They do not give the county the right to specify the types or categories of waste accepted at a facility, nor do they give the county the right to approve changes other than substantial changes. "Colorado law and Adams County regulations are clear," stated the court. "[A]ny conditions imposed on a hazardous waste facility must be contained in the CD itself; a County's only authority over a hazardous waste disposal site is through a CD."

Accordingly, in order to prove a violation of the Hazardous Waste Act or Adams County Development Standards and Regulations, the court held that the plaintiff must demonstrate that the CDPHE has determined that there were substantial changes that required Clean Harbors to obtain a new CD, an amendment to the existing CD, or otherwise seek Adams County's approval before receiving the subject materials at its facility.

The court found that Adams County failed to meet its burden. "It is the CDPHE, not Adams County, which has the sole authority to determine what constitutes a substantial change," said the court. Only when CDPHE determines that a substantial change has occurred is county review and approval permitted. In the case at hand, CDPHE determined that acceptance of the subject materials did not constitute, or result in, a substantial change. As such, Adams County has no authority to review and approve the acceptance of the subject materials, the license, or the designation of the facility by the Rocky Mountain Board.

In addition, the court pointed out that the prior CD issued by Adams County identified wastes that could be accepted at Clean Harbors by referencing the Hazardous Waste Permit. As admitted by the plaintiff's counsel, the permit has allowed the disposal of radioactive materials as approved by the CDPHE since 1998. In 2002, Adams County reviewed and approved this provision without amendment. Accordingly, the court held that "by referring to the Hazardous Waste Permit to identify the acceptable wastes, Clean Harbors' CD allows changes to the waste streams, without county

review, unless such changes result in a substantial change" pursuant to Colorado statute.

Solid Waste Act Adams County alleges that Clean Harbors violated the Solid Waste Act. However, the court found that the plain language of the act does not impose any requirements on Clean Harbors. Instead, the statute states that the Solid and Hazardous Waste Commission must include certain minimum standards in its rules. As such, the statute cannot be enforced against Clean Harbors.

However, even if the Solid Waste Act applied to Clean Harbors, the court held that the company already has a CD sufficient for the purpose of receiving the subject materials. Specifically, the court found that the 2004 CD allows for disposal of the subject materials by referencing the 1998 Hazardous Waste Permit.

Low-Level Radioactive Waste Act Adams County alleges that Clean Harbors violated the Low-Level Radioactive Waste Act and the Solid Waste Act by disposing of low-level radioactive wastes without first receiving a CD from Adams County and without entering into an agreement regarding the payment of fees.

First, the court determined that there is no requirement that Clean Harbors apply for a separate CD or a separate approval to receive low-level radioactive materials. Instead, the Low-Level Radioactive Waste Policy Act simply requires that a facility apply for a CD from the Board of County Commissioners. Since the applicable statutes provide that a CD for a hazardous waste disposal site satisfies any requirement for a CD imposed by the Solid Waste Act, and since Clean Harbors had received a prior CD from Adams County, the court determined that the requirements had been met. The court rejects any contrary construction of these statutes as suggested by the plaintiffs and defers to CDPHE's interpretation.

Second, even if the court were to construe the statutes to require Clean Harbors to obtain Adams County's approval regarding low-level radioactive materials, the court found that the county already reviewed and approved the facility. In particular, the 1998 State RCRA Permit allowed the disposal of radioactive materials as approved by the CDPHE.

Third, as admitted by counsel for Adams County, the court noted that the materials that Clean Harbors is accepting are not "radioactive waste" under Colorado law. Accordingly, a requirement that Clean Harbors receive a separate CD or reach a separate agreement to receive "radioactive waste" does not apply.

Finally, the court rejected Adams County's assertion that Clean Harbors is operating without an agreement regarding the payment of fees by noting that the facility already pays Adams County a fee of two percent of its total revenues—including revenues on both radioactive materials and hazardous waste. The court found that there is no requirement for Clean Harbors to obtain a separate or additional agreement for fees under the Low-Level Radioactive Waste Act when it already has an agreement to pay the maximum amount of fees allowed under the Hazardous Waste Act.

For a brief overview of the procedural history of the case, including the court's prior dismissal of two counterclaims filed by Clean Harbors, see LLW Notes, November/December 2007, pp. 15-16.

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

International Atomic Energy Agency

IAEA Remarks re Nuclear Safety Databases

On November 17, 2008, U.S. Nuclear Regulatory Commission Chairman Dale Klein gave a speech at the International Atomic Energy Agency conference in Mumbai, India. The remarks, which were titled "Enhancing Nuclear Safety Databases," focused on the role of national regulators in promoting nuclear safety.

Klein began his presentation by again congratulating the IAEA's International Safety Group for two newly released reports. One report is about "National Nuclear Installation Safety Infrastructure," and the other is about "Improving the International System for Operating Experience Feedback." Both documents, according to Klein, are very valuable tools that will not only help new entrants into the field of nuclear energy learn from the experience of other nations, but also will assist advanced nuclear nations to remember the fundamental goals of good regulatory oversight and the need for flexibility and adaptation to meet such goals. "In my view, every responsible regulator must recognize that the world is changing," said Klein, "and that our regulatory practices and procedures must adapt to meet those changes."

Some highlights and recommendations from Klein's remarks include:

- the global supply chain requires regulators to be more actively involved in communicating and interacting with other national regulatory bodies;
- vendor inspections constitute a valuable regulatory tool and issues or concerns that are found during said inspections should be shared across national borders; and,
- information about operating experience should be shared among utilities, as well as from one country to another.

Indeed, as part of his remarks, Klein urged "every nation that operates commercial nuclear reactors or materials facilities to dedicate the resources necessary to maintain significant safety-related information in appropriate databases; and ensure that this information is up-to-date, reliable, and accessible." There is little consistency on information exchange from one country to another, said Klein. Accordingly, he argues that capturing a broad spectrum of safety related data (including information about faulty or counterfeit components) and disseminating it to appropriate stakeholders (both domestically and internationally) should be a priority for all nuclear regulators.

In concluding his presentation, Klein stressed that this proposed dedication to transparency and information sharing, as well as to the continued improvement of communication and cooperation among all nuclear regulators, will advance the shared goal of safe and secure nuclear energy.

U.S. Signs International Arrangements

In early October 2008, the U.S. Nuclear Regulatory Commission renewed four international arrangements with Greece, Australia, Indonesia and France—and signed a new cooperative arrangement with Croatia—during the General Conference of the International Atomic Energy Agency (IAEA). Both NRC Chairman Dale Klein and Commissioner Kristine Svinicki attended the conference—which was held in Vienna, Austria—and met with some 25 regulatory counterparts and members of the IAEA Secretariat. Chairman Klein also delivered keynote remarks at the conference's Senior Regulators Meeting.

The renewed cooperative arrangements generally allow for the exchange of unclassified technical and regulatory information relating to safety, safeguards, physical protection, transportation safety, radiation protection, waste management, and the

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Advisory Committee on Medical Uses of Isotopes (ACMUI)

ACMUI Holds October Meeting

The U.S. Nuclear Regulatory Commission's Advisory Committee on Medical Uses of Isotopes (ACMUI) met at the agency's headquarters in Rockville, Maryland on October 27-28, 2008.

Among other items, committee members discussed subcommittee reports on cesium chloride used in medical applications and proposed alternatives to using this material; the proposed rule on medical use of radioactive material for permanent implants; and options to comply with requirements for fingerprinting workers with access to radioactive materials. Also discussed at the meeting were recommendations for modifying training and experience verification requirements for individuals authorized for the medical use of radioactive material and a petition for rulemaking, which proposed grandfathering all prospective authorized medical physicists and radiation safety officers with board certifications that were acceptable prior to October 25, 2005.

The ACMUI advises the NRC on policy and technical issues related to the regulation of medical uses of certain radioactive materials. Portions of ACMUI meetings may be open to the public. Minutes of the October 2008 ACMUI meeting became available in mid-December.

To access the transcript and written comments from the ACMUI web site, please go to http://www.nrc.gov/about-nrc/regulatory/advisory/acmui.html.

Advisory Committee on Reactor Safeguards (ACRS)

ACRS Holds End-of-the-Year Meetings

The U.S. Nuclear Regulatory Commission's Advisory Committee on Reactor Safeguards (ACRS) held its last meetings of the year in Rockville, Maryland in November and December 2008 to discuss several issues of current interest.

During the course of the December 4-6 meeting, committee members discussed various issues including the final Safety Evaluation Report for the Vogtle Early Site Permit application, portions of the Economic Simplified Boiling-Water Reactor design certification application, human reliability analysis research activities, acceptance criteria for emergency core cooling systems for reactor performance in the aftermath of a hypothetical accident, and review of a draft policy statement on defense-in-depth for future nuclear reactors.

The November 6-8 meeting agenda included, among other things, briefing by representatives of NRC staff regarding current fire protection issues, the status of license renewal activities, proposed changes to the review process for subsequent Combined License applications and a position paper on incorporating international radiological protection recommendations into NRC regulations.

The ACRS advises the Commission, independently from the NRC staff, on safety issues related to the licensing and operation of nuclear power plants. Although ACRS meetings are generally open to the public, portions of the meetings may be closed to protect proprietary information.

Complete agendas for ACRS meetings can be found on the NRC's web site at http://www.nrc.gov/reading-rm/doc-collections/acrs/agenda/2008/. For additional information on ACRS meetings, please contact Antonio Dias at (301) 415-6805.

(Continued from page 1)

disposal of large quantities of DU be developed through the rulemaking process and that (2) specific parameters and assumptions for conducting site-specific analysis be incorporated into a guidance document subject to public comment.

Background

A review of the classification of large quantities of DU was designated as one of seven high-priority tasks by NRC staff in their October 2007 strategic assessment of the agency's low-level radioactive waste regulatory program. (See *LLW Notes,* November/December 2007, pp. 1, 20-23.) The issue arises out of the licensing of new uranium enrichment facilities—including the LES National Enrichment Facility (NEF) and the USEC American Centrifuge Plant—and the existing DOE stockpile of DU at the Paducah and Portsmouth Gaseous Diffusion Plants. Due to such activities, NRC projects that more than 1 million metric tons of depleted uranium hexafluoride will need a disposition path. Both Energy*Solutions*' existing facility in Clive, Utah and Waste Control Specialists proposed facility in Andrews County, Texas have expressed an interest in disposing of this waste. The disposal of such high concentrations and large quantities of DU were not considered in the Final Environmental Impact Statement (FEIS) supporting the development of 10 CFR Part 61, however, because there were no commercial facilities generating large amounts of DU waste at the time.

Under the current regulatory structure, any facility licensed to accept Class A waste would represent a potential disposal path for DU. Accordingly, NRC communicated with state regulators that oversee existing or proposed low-level radioactive waste disposal facilities in South Carolina, Texas, Utah and Washington. (Enrichment facility licensees or other potential licensees, however, were not contacted as part of staff's analysis.) Although most of the four identified commercial disposal facilities have accepted small quantities of DU in the past, the regulators in these states generally agreed that large quantities of DU should be handled as a unique waste stream and that additional analysis should be conducted prior to its disposal. *(Additional information on individual state regulations and facility analysis can be found in SECY-08-0147.)*

Technical Analysis

As part of the review process, NRC staff performed a technical analysis to evaluate the impacts of near-surface disposal of large quantities of DU. In particular, staff developed a screening model to evaluate the radiological risk and uncertainties associated with such disposal at a generic low-level radioactive waste disposal site applying a broad range of climatic, hydrological, and geochemical conditions. The model evaluated the impacts of key variables including disposal configurations, performance periods, institutional control periods, waste forms, site conditions, exposure pathways, and receptor scenarios.

The technical analysis concluded that near-surface disposal may be appropriate for large quantities of DU under certain conditions, but that unfavorable site conditions (shallow disposal at a depth of less than 3 meters, disposal at humid sites with a potable groundwater pathway, etc.) could exceed the performance objectives of Part 61, Subpart C. The analysis further determined that shallow disposal for large quantities of DU are not likely to be appropriate regardless of site conditions, although the disposal of small quantities of approximately 1 to 10 metric tons of DU could be appropriate.

Regulatory Options for Waste Classification

SECY-08-0147 states that, based on the technical analysis results, NRC staff believe that a change to existing regulations or a generic communication is warranted to ensure the safe disposal of large quantities of DU. Accordingly, staff identified the following four options to facilitate safe disposal:

(1) Generic Communication to Clarify Need to Demonstrate Compliance with Performance Objectives:

In Order CLI-05-05 (In the Matter of LES, January 18, 2005), the Commission stated "In the end, the 'bottom line for disposal' of low-level radioactive wastes are the performance objectives of 10 C.F.R. Subpart C, which set forth the ultimate standards and radiation limits for (1) protection of the general population from releases of radioactivity; (2) protection of individuals from inadvertent intrusion; (3) protection of individuals during operation; (4) and stability of the disposal site after closure." Under Option 1, NRC staff would issue a generic communication (i.e., a regulatory issue summary) that would reiterate the Commission's above-identified statement and would clarify acceptable methods for dealing with unique waste streams, such as large quantities of DU. The generic communication would emphasize that compliance with the existing performance objectives needs to be demonstrated through analysis and that classification under section 61.55(a)(6) should not be relied upon for this purpose. In addition to the generic communication, staff would revise the associated guidance documents to describe an acceptable method for conducting site-specific analysis for nuclides or concentrations not specifically covered in the waste classification tables.

The primary advantages of Option 1, as identified by NRC staff, include that it would not require a rulemaking and would require fewer resources than the other options. In addition, it allows state regulators to request site-specific analysis for disposal of large quantities of DU or other unique waste streams to demonstrate compliance with performance objectives. The primary disadvantage is that these state regulators would not be able to require the performance of such site-specific analysis and licensees and applicants would be free to propose alternative methods of regulatory compliance.

(2) Rulemaking to Specify Requirement for Site-Specific Analysis in Section 61.55(a)(6):

The second option evaluated by NRC staff involves the performance of a limited rulemaking to revise Part 61 to reflect a requirement to perform a site-specific analysis prior to disposal of unique waste streams, including large quantities of DU. (In such case, staff recommends the assignment of a compatibility category that would require Agreement States to adopt and make conforming changes to their regulations.) By using the broader term "unique waste streams," staff hopes to avoid the need for additional rulemakings for other such waste streams that may arise in the future—including those that may result from spent fuel reprocessing or new kinds of facilities that generate significantly different concentrations and quantities of waste not previously considered in the Part 61 FEIS. This option proposes that specific technical requirements—such as the types of receptors used to assess protection of the general population from releases of radioactivity, the exposure scenarios evaluated to protect individuals from inadvertent intrusion, and the period of performance—would be developed in the notice and comment rulemaking process and that a guidance document would be developed and issued to provide Agreement State regulators, and their licensees and applicants, technical guidance to conduct site specific analyses.

NRC staff identifies the primary advantage of Option 2 as the creation of a legally binding requirement to ensure the performance and review of a site specific analysis, which staff believes is consistent with the Commission's expectations and preference of state regulators. In addition, staff believes that this option ensures the protection of health and safety through the imposition of an additional requirement for large quantities of DU in a risk-informed manner that will be consistent with the analysis performed to develop the waste classification tables in section 61.55. Staff identifies the primary disadvantages of this option as the need to perform a site-specific analysis instead of use of a convenient table with a specific concentration limit, as well as the fact that it is more resource intensive.

(3) Determine Classification for DU within Existing Classification Framework

Option 3 involves the development of a generic waste classification for DU (i.e., A, B, C or GTCC) and an associated concentration limit to be added to

the waste classification tables via a rulemaking. Consistent with the assumptions in the original Part 61 analysis, this concentration limit would likely be based conservatively on potential disposal at a "reference" humid, eastern low-level radioactive waste disposal site.

Staff believes that the primary advantage to this option is that DU would be given a specific concentration limit, similar to the other radionuclides currently listed in section 61.55, and a specific waste classification that would apply to any low-level radioactive waste disposal site in the country. This could be useful if several new disposal facilities were to be proposed in that it would eliminate the need for a site specific analysis. The primary disadvantage of this option, according to staff, is that it presents a prescriptive rather than risk-informed approach in that it is possible that the concentration limit developed for a reference site could be so low as to unnecessarily constrain disposal options at sites with significantly different characteristics. In addition, it propagates the existing waste classification system, which was developed using often conservative assumptions that are not necessarily applicable in today's environment of limited disposal options and improved performance assessment capabilities.

(4) Re-Examine the Existing Waste Classification Framework

The final option considered by staff is to risk-inform the entire waste classification framework via a rulemaking by using updated modeling and performance assessment techniques to evaluate and revise existing tables for all radionuclides, if necessary, rather than just for DU. Staff states that such a revision would likely involve different methodologies and assumptions than the original Part 61 methodology for key variables such as disposal configurations, performance periods, institutional control periods, waste forms, site conditions, exposure pathways, and receptor scenarios. Staff could also consider other waste classification systems, such as that used by the International Atomic Energy Agency, to determine their appropriateness for use in the United States.

The primary advantage to this option identified by staff is that the waste classification framework would reflect current knowledge of facility performance and would present risk-informed concentration limits for all radionuclides, rather than selectively for just DU. Staff notes that an update of the methodology used to develop concentration limits could result in higher or lower concentration limits than those currently in use, which could actually increase or decrease disposal options for some types of wastes. Some stakeholders, staff notes, may view this as "deregulation" of low-level radioactive waste. The primary disadvantage identified by staff is that this may not be the most effective use of agency resources, given the relatively low increase in health and safety likely to be achieved and the small number of currently operating facilities. Staff also points out that this option is well beyond the Commission's original direction and would require a large amount of time and resources.

Recommendations

NRC staff concluded that large quantities of DU can de disposed of in a near-surface disposal facility under certain conditions while meeting the performance objectives of Part 61. However, staff believes that a change to existing regulations is necessary to ensure that large quantities of DU are disposed safely due to the unique characteristics of the waste and additional considerations required for its disposal.

Staff recommended that the Commission approve Option 2—the development of a rulemaking to specify a requirement for a site-specific analysis for large quantities of DU in section 61.55(a)(6) and technical requirements for such an analysis. In this regard, staff states that "This option provides a risk-informed approach to protecting public health and safety while causing minimal disruption to the existing waste classification system, yet codifying the requirement for a site-specific analysis in Part 61 for use by NRC, Agreement States, licensees, and future license applicants." Staff also recommends the development of a guidance document for public comment that will outline the appropriate

parameters and assumptions to use in conducting a site-specific analysis for the disposal of large quantities of DU.

For additional information, please contact Jim Kennedy of the NRC's Office of Federal and State Materials and Environmental Management Programs, Division of Waste Management and Environmental Protection, at (301) 415-6668.

NRC Assumes Authority over NARM

Effective September 30, 2008, the U.S. Nuclear Regulatory Commission assumed regulatory authority over certain radioactive materials in five states—including Vermont, West Virginia, Idaho, Missouri, and South Dakota—Guam, and some U.S. possessions under the provisions of the Energy Policy Act of 2005. The material in question consists of naturally occurring and accelerator-produced radioactive material (NARM), which had been under state authority until the 2005 act included this material in the definition of "byproduct material" subject to the NRC's jurisdiction.

NRC initially issued a waiver of its authority to allow the states to continue to regulate this material while the agency developed new regulations to implement the legislation. The final regulations became effective on November 30, 2007. At that time, NRC terminated the waiver and assumed authority for NARM held by federal agencies and licensees in federally recognized Indian tribes, Delaware, Indiana, Wyoming, Montana, the District of Columbia, Puerto Rico and the U.S. Virgin Islands. This current action is the second phase of waiver terminations. NRC's 35 Agreement States—which regulate radioactive materials under agreements with the NRC—retain regulatory authority over NARM under their existing agreements with the agency.

Current NRC licensees who also possess NARM in the five affected states, Guam, and all U.S. territories other than Puerto Rico and the U.S. Virgin Islands will have six months from the waiver termination date to apply for an amendment to their materials license to cover NARM in their possession. Users of NARM who do not currently hold NRC licenses will have a year from that date to apply for an NRC license.

The agency anticipates that the waivers for the remaining non-Agreement States—Connecticut, Virginia, New Jersey, Michigan, Alaska and Hawaii—will be terminated in the third phase of the transition, which will occur on August 7, 2009. Should any of these states become an NRC Agreement State before that date, the waiver for that state will terminate when the agreement takes effect.

For additional information on the Energy Policy Act's provisions expanding the definition of byproduct material subject to NRC's jurisdiction, as well as the agency's transition plan for implementing those provisions, see the "NARM Toolbox" on the NRC web site at http://nrc-stp.ornl.gov/narmtoolbox.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

- approved the operating license renewal of the Wolf Creek Generating Station in Kansas for an additional 20 years of operation;
- hosted a public meeting to discuss the results of an inspection of the proposed aging-management approach for the Beaver Valley 1 and 2 nuclear power plants;
- announced that an application for a 20-year renewal of the operating license for the Duane Arnold nuclear power plant is available for public review;
- announced that an application for a 20-year renewal of the operating license for the Cooper nuclear power plant is available for public review;
- heard oral arguments regarding the application by Nuclear Management Company LLC to renew its license for an additional 20 years of operation at the Prairie Island Nuclear Generating Plant, Units 1 and 2; and,
- hosted meetings to solicit public comments on possible environmental impacts of 20 additional years of operation at the Kewaunee nuclear power plant.

Wolf Creek Nuclear Plant

On November 20, NRC announced that it has approved the operating license renewal of the Wolf Creek Generating Station in Kansas for an additional 20 years of operation. The Wolf Creek Generating Station is a pressurized water reactor located approximately three miles northeast of Burlington, Kansas. Wolf Creek Nuclear Operating Corporation submitted its application for license renewal on October 4, 2006. The current license for the Wolf Creek nuclear plant was set to expire on March 11, 2025. With the renewal, the license is extended until March 11, 2045.

NRC's decision to extend the operating license followed a careful review of the plant's safety systems and specifications and on-site inspections of the plant to verify information submitted by the applicant. In addition, the Advisory Committee on Reactor Safeguards—an independent body of technical experts which advises the Commission—issued its recommendation for approval of the renewal application on September 17.

The Wolf Creek nuclear plant's license renewal application is available on the NRC web site at http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html. The final environmental impact statement is posted on the NRC web page at http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1437/supplement32/. The ACRS report may be found at http://www.nrc.gov/reading-rm/doc-collections/acrs/letters/2008/.

Beaver Valley Nuclear Plant

On November 12, NRC staff held a meeting with management of the Beaver Valley nuclear power plant to discuss the results of an inspection of the proposed aging-management approach for the facility. The inspection is part of an ongoing NRC review of an application seeking a 20-year license extension for the plant. In addition, on October 14, NRC staff announced that they are seeking public comment on a draft supplemental environmental impact statement (SEIS) on the proposed license renewal. The draft SEIS, which was issued in September of this year, concluded that there are no environmental impacts that would preclude renewal of the facility's operating license. Public comments on the draft SEIS will be accepted until December 17, 2008.

Beaver Valley Units 1 and 2 are pressurized water reactors located about 17 miles west of McCandless, Pennsylvania. The current operating licenses expire

on January 29, 2016 for Unit 1 and May 27, 2027 for Unit 2. Beaver Valley's operator, First Energy Nuclear Operating Company, submitted the license renewal application on August 27, 2007.

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

Duane Arnold Nuclear Plant

On November 7, NRC announced that an application for a 20-year renewal of the operating license for the Duane Arnold nuclear power plant is available for public review. The Duane Arnold plant—which is located 8 miles northwest of Cedar Rapids, Iowa—has one boiling water reactor. The current operating license expires on February 21, 2014. Duane Arnold's operator, the FPL Energy Duane Arnold LLC, submitted the renewal application on October 1, 2008.

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

A copy of the Duane Arnold application is available on the NRC web site at http://www.nrc.gov/reactors/operating/licensing/renewal/applications/duane-arnold-energy-center.html.

Cooper Nuclear Plant

On November 6, NRC announced that an application for a 20-year renewal of the operating license for the Cooper nuclear power plant is available for public review. The Cooper plant—which is located 23 miles south of Nebraska City, Nebraska—has one boiling water reactor. The current operating license expires on January 18, 2014. Cooper's owner, the Nebraska Public Power District, submitted the renewal application on September 30, 2008.

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

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

Prairie Island Nuclear Plant

On October 29, NRC's Atomic Safety and Licensing Board (ASLB) heard oral arguments regarding the application by Nuclear Management Company LLC to renew its license for an additional 20 years of operation at the Prairie Island Nuclear Generating Plant, Units 1 and 2. The Prairie Island Indian Community has petitioned to intervene in the license renewal proceeding. The oral arguments addressed the standing of this potential party to intervene and the admissibility of its various environmental and technical contentions.

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, 2008.

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.

Kewaunee Nuclear Plant

On October 22, NRC staff conducted two public meetings to solicit comments on possible environmental impacts of 20 additional years of operation at the Kewaunee nuclear power plant. 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 the opportunity to offer comments on environmental issues that they consider worthy of review.

The Kewaunee power station has one pressurized water reactor. The current operating license for the plant—which is located 27 miles east of Green Bay, Wisconsin—is due to expire on December 21, 2013. The plant's operator, Dominion Energy Kewaunee Inc., submitted its license renewal application on August 14, 2008.

The Kewaunee license renewal application is available on the NRC web site at http://www.nrc.gov/reactors/operating/licensing/renewal/applications/kewaunee.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 49 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.

Combined License Application Reviews Continue

The U.S. Nuclear Regulatory Commission continues to process Combined License (COL) applications. In that regard, the agency recently

- held public meetings in Crystal River, Florida on December 4 to discuss environmental issues that the agency should consider in reviewing a COL application for two new reactors proposed for the Levy County site;
- conducted a public meeting in St. Francisville, Louisiana on November 18 to discuss how the agency will review a COL application for a new reactor at the River Bend site near Baton Rouge;
- docketed, or accepted for review, the COL applications for two new reactors at the Victoria County site near Victoria, Texas;
- made available to the public the COL applications for new reactors at the Bell Bend site near Berwick, Pennsylvania; the Nine Mile Point site near Oswego, New York; the Comanche Peak site near Glen Rose, Texas; the Fermi site near Toledo, Ohio; and,
- announced the opportunity to participate in the hearing on a COL application for two new reactors at the Summer site near Columbia, South Carolina.

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.

Applications Submitted to Date

To date, NRC has received COL applications for the Bellefonte site in Alabama; the Levy County site in Florida; the Vogtle site in Georgia; the River Bend Station site in Louisiana; the Calvert Cliffs site

in Maryland; the Fermi site in Michigan; the Grand Gulf site in Mississippi; the Callaway site in Missouri; the Nine Mile Point site in New York; the Shearon Harris site in North Carolina; the Bell Bend site in Pennsylvania; the Lee and V.C. Summer sites in South Carolina; the Comanche Peak, South Texas Project and Victoria County sites in Texas; and, the North Anna site in Virginia.

The agency is conducting an initial check on some of these applications to ensure that sufficient information has been submitted to conduct formal reviews. Other applications are currently in various stages of the review process. In addition, the agency expects several more COL applications to be submitted in 2008.

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.

Levy County

On December 4, NRC held public meetings in Crystal River, Florida to discuss environmental issues the agency should consider in reviewing a COL application for two new reactors at the Levy County site. The applicant, Progress Energy, submitted the application and associated information on July 30. The application seeks approval to build and operate two AP 1000 reactors at the site, which is located approximately 10 miles northeast of Crystal River. 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.

NRC conducted two meetings in Crystal River to discuss potential environmental issues and the associated environmental report submitted by the applicant. NRC staff will also consider written comments on the scoping process. Comments should be submitted no later than December 23.

The Levy County application, minus proprietary or security-related details, is available on the NRC website at http://www.nrc.gov/reactors/new-reactors/col/levy.html. Information on the AP 1000 review is available on the site at http://www.nrc.gov/reactors/new-reactors/design-cert/ap1000.dcd.html.

River Bend

On November 18, NRC staff conducted a public meeting in St. Francisville, Louisiana to discuss how the agency will review a COL application for a new reactor at the River Bend site—which is located approximately 24 miles northwest of Baton Rouge. NRC staff is currently conducting an initial check of the application to determine whether it contains sufficient information required for a formal review. The applicant, Entergy, is seeking a license to build and operate an Economic Simplified Boiling Water Reactor (ESBWR) at River Bend. The ESBWR is a 1,500 Mwe design currently under NRC review for possible certification.

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

The River Bend application, minus proprietary or security-related details, is available on the NRC web site at http://www.nrc.gov/reactors/new-reactors/col/river-bend.html. Information on the ESBWR review is available on the site at http://www.nrc.gov/reactors/new-reactors/design-cert/esbwr.html.

Victoria County

On October 31, NRC announced that it has docketed, or accepted for review, a COL application for two new reactors at the Victoria County site near Victoria, Texas—the 11th COL request accepted by the agency to date. The applicant, Exelon Nuclear Texas Holdings, submitted the application and associated information on September 3, 2008. The application seeks approval to build and operate two Economic

Simplified Boiling Water Reactors (ESBWR) at the site, which is located approximately 13 miles south of Victoria. (For additional information on the ESBWR, see above under "River Bend.")

Docketing the Victoria County application does not indicate whether the Commission will approve or reject the request. The docket numbers established for this application are 52-031 and 52-032. The NRC will shortly issue in the *Federal Register* a notice of opportunity to participate, or "intervene," in a hearing on the application. Petitions to intervene in a hearing may be filed within 60 days of the notice by anyone whose interest may be affected by the proposed license and who wishes to participate as a party in the proceeding.

The Victoria County application, minus proprietary or security-related details, is available on the NRC website at http://www.nrc.gov/reactors/new-reactors/col/victoria.html.

Bell Bend

On October 29, NRC announced the availability to the public of a COL application for a new reactor at the Bell Bend site—about seven miles southeast of Berwick, Pennsylvania. The applicant, PPL Bell Bend, submitted an application and associated information for a license to build and operate an Evolutionary Power Reactor (EPR) at the site on October 10. The EPR is a 1,600 MWe large pressurized water reactor of evolutionary design that is currently under NRC review.

NRC staff is currently conducting an initial check of the Bell Bend application to determine whether it contains sufficient information required for a formal review. A decision is expected by late December. If the application is accepted, NRC will then announce an opportunity for the public to participate in an adjudicatory hearing on the application.

The Bell Bend application, minus proprietary or security-related details, is available on the NRC web site at http://www.nrc.gov/reactors/new-reactors/col/bell-bend.html. Information on the EPR review is available on the site at http://www.nrc.gov/reactors/new-reactors/design-cert/epr.html.

Nine Mile Point

On October 21, NRC announced the availability to the public of a COL application for a new reactor at the Nine Mile Point site—about six miles northeast of Oswego, New York. The applicant, UniStar, submitted the application and associated information on September 30. It seeks approval to build and operate an Evolutionary Power Reactor (EPR) at the site. (For additional information on the EPR, see above under "Bell Bend.")

NRC staff is currently conducting an initial check of the Nine Mile application to determine whether it contains sufficient information required for a formal review. A decision is expected by early December. If the application is accepted, NRC will then announce an opportunity for the public to participate in an adjudicatory hearing on the application.

The Nine Mile application, minus proprietary or security-related details, is available on the NRC web site at http://www.nrc.gov/reactors/new-reactors/col/nine-mile-point.html.

Comanche Peak

On October 10, NRC announced the availability to the public of a COL application for two new reactors at the Comanche Peak site near Glen Rose, Texas. The applicant, Luminant Power, submitted the application and associated information on September 19. It seeks approval to build and operate two U.S.-Advanced Pressurized Water Reactors (US-APWR) at the site. The US-APWR is a Mitsubishi Heavy Industries-designed 1,700 MWe pressurized-water reactor that is currently under NRC review for possible certification.

NRC staff is currently conducting an initial check of the Comanche Peak 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 on the application.

The Comanche Peak application, minus proprietary or security-related details, is available on the NRC web site at http://www.nrc.gov/reactors/new-reactors/col/comanche-peak.html. Information on the US-APWR review is available on the site at http://www.nrc.gov/reactors/new-reactors/design-cert/apwr.dcd.html.

Fermi

On October 10, NRC announced the availability to the public of a COL application for a new reactor at the Fermi site near Toledo, Ohio. The applicant, Detroit Edison, submitted the application's safety report and associated information on September 18. The company is seeking approval to build and operate an ESBWR at the site. (For additional information on the ESBWR, see above under "River Bend.")

NRC staff is currently conducting an initial check of the Fermi 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 on the application.

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

Summer

On October 10, NRC announced an opportunity to participate in a hearing on 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 27. 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 AP 1000, see above under "Levy County.")

NRC determined that the Summer application contains sufficient information for formal docketing and the beginning of a technical review on July 31. The docket numbers established for this application are 52-027 and 52-028. Thereafter, NRC published in the *Federal Register* a notice of opportunity to intervene. The deadline for petitioning to intervene is 60 days after the publication of the notice.

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

Advanced Reactor Design Policy Issued

In mid-October 2008, the U.S. Nuclear Regulatory Commission published the latest update to its policy statement on advanced nuclear power plant designs. The policy provides expectations and guidance on safety, security and preparedness-related issues so, as a matter of prudence, designers can address them early in the development of advanced reactors. The policy encourages the earliest possible interactions between the NRC and reactor vendors, potential applicants, the public, and other government agencies.

According to the agency's press release, the Commission believes that designers should consider several reactor characteristics, including:

- highly reliable, less complex safe shutdown systems—particularly, ones with inherent or passive safety features;
- simplified safety systems that allow more straightforward engineering analysis, operate with fewer actions, and increase operator comprehension of reactor conditions;
- concurrent consideration of safety and security requirements while designing a facility, resulting in an overall security system that requires fewer human actions;
- features that prevent a simultaneous breach of containment and loss of core cooling from an aircraft impact, or that inherently delay any radiological release; and,
- features that maintain spent fuel pool integrity following an aircraft impact.

The policy statement is available on NRC's web site at http://www.nrc.gov/reading-rm/doc-collections/commission/policy/.

NRC Hosts Workshop re New Reactor Construction

On December 10-11, 2008, the U.S. Nuclear Regulatory Commission hosted a workshop to share insights and lessons learned for companies supplying parts for new reactor construction. The workshop was held at the Marriott Bethesda North in Rockville, Maryland.

"We're looking for an open discussion with current nuclear plant operators, plant component vendors and other interested groups," said Glenn Tracy, Director of the Division of Construction Inspection in the NRC's Office of New Reactors. "We want everyone involved to understand what our safety requirements are, how we monitor quality assurance programs and other areas vital to proper reactor construction."

Workshop information can be found on the NRC's web site at http://www.nrc.gov/public-involve/conference-symposia/vendor-oversight/index.html. For additional information, please contact Aida Rivera-Varona at (301) 415-4001 or at Aida.Rivera-Varona@nrc.gov.

NRC Announces Operating Reactor ListServ

The U.S. Nuclear Regulatory Commission is now distributing publicly available outgoing correspondence concerning operating nuclear power plants via electronic notification through a listserv. The listserv includes correspondence on operating license amendments, relief requests, exemptions, requests for additional information, and public meeting summaries.

"Sending documents via email is another way we are keeping the public current on nuclear plant news and information," said Joseph Giitter, Director of NRC's Division of Operating Reactor Licensing.

NRC licensees, stakeholders and members of the public that have been on NRC distribution lists will now receive documents via email. They may choose correspondence pertaining to one plant or to several plants.

Persons wishing to subscribe to the new service may do so at http://www.nrc.gov/public-involve/listserver/plants-by-region.html.

Final Rule re Decommissioning Planning

On October 1, 2008, U.S. Nuclear Regulatory Commission staff submitted a request for Commission approval to publish a final rule in the *Federal Register* that would amend regulations found in 10 CFR to improve licensees' decommissioning planning activities during active facility operations, thereby reducing the likelihood that any currently operating facility will become a legacy site.

The final rule

- adds a new requirement that licensees conduct their operations to minimize the introduction of residual radioactivity into the site, including subsurface soil and groundwater;
- requires licensees to survey residual radioactivity that may be a radiological hazard at the site, including in subsurface areas, and to keep records of surveys of subsurface residual radioactivity identified at the site with records important for decommissioning;
- amends financial assurance regulations to require materials licensees to report additional details in their decommissioning cost estimates, and require decommissioning power reactor licensees to annually report additional information on the costs of decommissioning and spent fuel management;
- eliminates the line of credit as an approved financial assurance mechanism for all licensees, and eliminates the escrow account as an approved financial assurance mechanism for materials licensees; and,
- adds requirements to provisions regarding parent guarantee and self-guarantee to provide added assurance that funds will be available at

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Proposed Revisions re Waste Confidence Findings

On October 8, 2008, the U.S. Nuclear Regulatory Commission announced that it is seeking public comment on proposed revisions to its waste confidence findings. In particular, the NRC is seeking comment on whether the findings should continue to include a timeframe for the availability of a repository for high-level nuclear waste. The proposed revisions—which were published and discussed in two separate *Federal Register* notices dated October 9—are intended to support the agency's reviews of license applications for new commercial power reactors by resolving appropriate issues generically in rulemaking.

The waste confidence findings were first issued in 1984, subsequently revised in 1990, and reaffirmed in 1999. They state the Commission's confidence that a geologic repository would be available sometime in the first quarter of the 21st century and that spent nuclear fuel can be safely stored without environmental impacts for at least 30 years beyond the licensed operation of a reactor, including the term of a renewed license. These findings are codified in NRC regulations at 10 CFR 51.23(a).

According to NRC's announcement, the proposed revisions would predict that repository capacity will be available within 50 to 60 years beyond the licensed operation of all reactors, and that spent fuel generated in any reactor can be safely stored without significant environmental impact for at least 60 years beyond the licensed operation of the reactor. In the alternative, a timeframe for the availability of a repository could be eliminated entirely from inclusion in the revised waste confidence findings.

NRC stresses that elimination of the 2025 timeframe is not intended to signal a lack of confidence that a repository will be available by that date. Nonetheless, the agency acknowledges that a repository can only be available by that date if the agency ultimately approves the U.S. Department of Energy's application to construct a disposal facility at Yucca Mountain, Nevada. Any such decision must await the results of staff's technical review and the outcome of an NRC licensing proceeding on the application, which was submitted on June 3 and formally docketed on September 8 of this year.

In its announcement seeking public comment, NRC states that it does not believe that the existence of the 2025 date undermines its oft-stated commitment to be an impartial adjudicator of the Yucca Mountain application. However, the agency believes that deleting this date will remove even an appearance of prejudgment in a licensing proceeding for Yucca Mountain.

Revising the agency's findings on the period for safe storage of spent fuel reflects the NRC's confidence in the safety and security of spent fuel storage in pools and dry casks. This confidence is bolstered by operational experience over the past two decades, as well as extensive security assessments performed by the NRC and security enhancements ordered by the agency in the aftermath of the terrorist attacks of September 11, 2001.

NRC will accept public comments on the proposed revisions through December 8, or 60 days following publication in the *Federal Register*. They may be submitted over the Federal e-Rulemaking Portal at http://www.regulations.gov by searching for Docket ID NRC-2008-0404; by e-mail to Rulemaking.Comments@nrc.gov; by mail to Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attn: Rulemakings and Adjudications Staff; or by facsimile to (301) 415-1101.

Nuclear Accident Response Strategies Survey Published

On November 13, 2008, the U.S. Nuclear Regulatory Commission released a publication that provides new insights into how to best protect the public during a nuclear power plant accident. The publication is based on the results of focus groups and telephone surveys conducted in the Emergency Planning Zones (EPZs) around reactor sites. NRC plans to use the data contained in the report to assist the agency in its review of regulations and guidance related to emergency preparedness and to determine if the agency should consider changes to existing protective action strategies.

In 2007, NRC used focus groups to collect information that guided development of the phone survey. The survey, which was conducted by the Sandia National Laboratories in 2008, was administered to approximately 2,500 households that were randomly selected in order to obtain 800 completed, anonymous surveys.

The results of the surveys show that a majority of the residents living within the EPZs of nuclear power plants

- were generally well informed about what to do in the event of a nuclear power plant emergency;
- remembered receiving emergency response information from the nuclear power plant and kept it readily accessible;
- recalled receiving information about evacuation and sheltering;
- agreed that they would evacuate, shelter-in-place, or monitor for more information, if directed to do so; and,
- agreed they would support a staged evacuation, during which some residents would shelter while others would evacuate.

In addition, the surveys found that many parents will get their children from school even when told they were already being evacuated and that many "special needs" residents who don't live in special facilities had not registered for evacuation assistance.

Based on the survey results, the NRC—in partnership with the Federal Emergency Management Agency (FEMA)—is proceeding with revision of "NUREG-0654, Supplement 3, Criteria for Protective Action Recommendations for Severe Accidents." NRC plans to seek stakeholder input during the process to revise Supplement 3. In addition, NRC will work with stakeholders and its federal partners, including FEMA, to address the study findings.

The full report, which is titled, "Review of NUREG-0654, Supplement 3, Criteria for Protective Action Recommendations for Severe Accidents," can be found at http://www.nrc.gov/reading-rm/doc-collections/nuregs/contract/cr6953/vol2/.

FY 2008 Performance & Accountability Report Issued

In mid-November 2008, the U.S. Nuclear Regulatory Commission announced the publication of the agency's Performance and Accountability Report for FY 2008. The report, which is available on the agency's web site, shows that the NRC has achieved its safety and security performance goals over the past 12 months. NRC is responsible for overseeing the civilian use and management of radioactive materials and nuclear fuel while protecting public health and safety and the environment, as well as for promoting the security of the nation.

In FY 2008, NRC provided regulatory oversight of the nuclear industry, including the safe operation of 104 nuclear power plants. The agency's FY 2008 new reactor licensing efforts include active reviews of nine Combined License applications to build and operate 15 new nuclear power plants. If approved and constructed, these proposed nuclear power plants would be the first new plants built in more than 30 years. In addition, during FY 2008, NRC also began a full technical review of the U.S. Department of Energy's application to build and operate the nation's first geologic repository for high-level nuclear waste at Yucca Mountain, Nevada.

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

According to the agency, NRC has made significant strides in improving its financial systems and business operations, including resolving an issue from the agency's Federal Information Security Management Act audit from FY 2007. NRC continues to evaluate its internal controls and to implement internal control improvements, including those related to financial reporting and financial management systems, as required by the Federal Managers Financial Integrity Act. In support of the President's Management Agenda, NRC also works with other federal agencies to obtain its human resources, payroll, e-Travel, and accounting services. In addition, the agency is integrating and modernizing its financial systems to enhance internal controls, reporting, and decision-making.

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

Help Desk Opened re Electronic Filings

In early November 2008, the U.S. Nuclear Regulatory Commission announced the establishment of a telephone and e-mail help desk to assist members of the public and licensees in submitting or accessing documents through the agency's electronic filing system. Previously, the NRC Public Document Room staff handled public requests for assistance. However, with electronic submissions in a wide variety of licensing proceedings expected to increase dramatically, the agency decided to create a dedicated help desk to handle requests for assistance.

The help desk is intended to assist stakeholders seeking information on license applications, including new nuclear power plants and the planned Yucca Mountain nuclear waste repository. Assistance will also be available for using the NRC's Electronic Hearing Docket for adjudications before the Commission or an Atomic Safety and Licensing Board; the Electronic Information Exchange for electronic submittal of documents; e-filings for agency adjudications; and, the agency's ADAMS public online document management system.

"The help desk will improve our customer service by providing members of the public and our licensees with consistent and timely assistance in filing documents for adjudicatory hearings, license applications, and other matters," said Darren B. Ash, the NRC's Deputy Executive Director for Corporate Management and Chief Information Officer. "This furthers our goal of being open and transparent and encouraging maximum public participation in our regulatory activities."

More information on the help desk and instructions for electronic submissions to the NRC can be found on the newly revised "Guidance for Electronic Submissions to the NRC, Revision 4," on the agency web site at http://www.nrc.gov/site-help/e-submittals.html. The desk—which is open from 8 am to 8 pm EST Mondays through Fridays, except federal holidays—can be reached by toll-free telephone at (866) 672-7640 or via e-mail at MSHD.Resource@nrc.gov.

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environmental impact of nuclear facilities, materials and activities.

"Arrangements for cooperation with our regulatory counterparts enable us to exchange information in areas of mutual interest, encouraging open bilateral dialogue," said Klein. "These arrangements also allow the NRC to provide assistance to countries that may request it by, for example, sharing insights into our regulatory processes."

The IAEA General Conference is the largest annual gathering of IAEA member states. During the week-long conference, representatives have the opportunity to discuss their policies, programs and activities in a variety of forums, including large plenary sessions, panel discussions, bilateral meetings, and exhibit area displays.

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the time of decommissioning, even if the guarantor enters bankruptcy.

NRC published the proposed rule on January 31, 2008 at 73 *Federal Register* 3811. The public comment period closed on May 8, 2008.

A copy of the final rule can be found at http://www.nrc.gov/reading-rm/doc-collections/commission/secys/2008/secy2008-0144/2008-0144scy.pdf.

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**

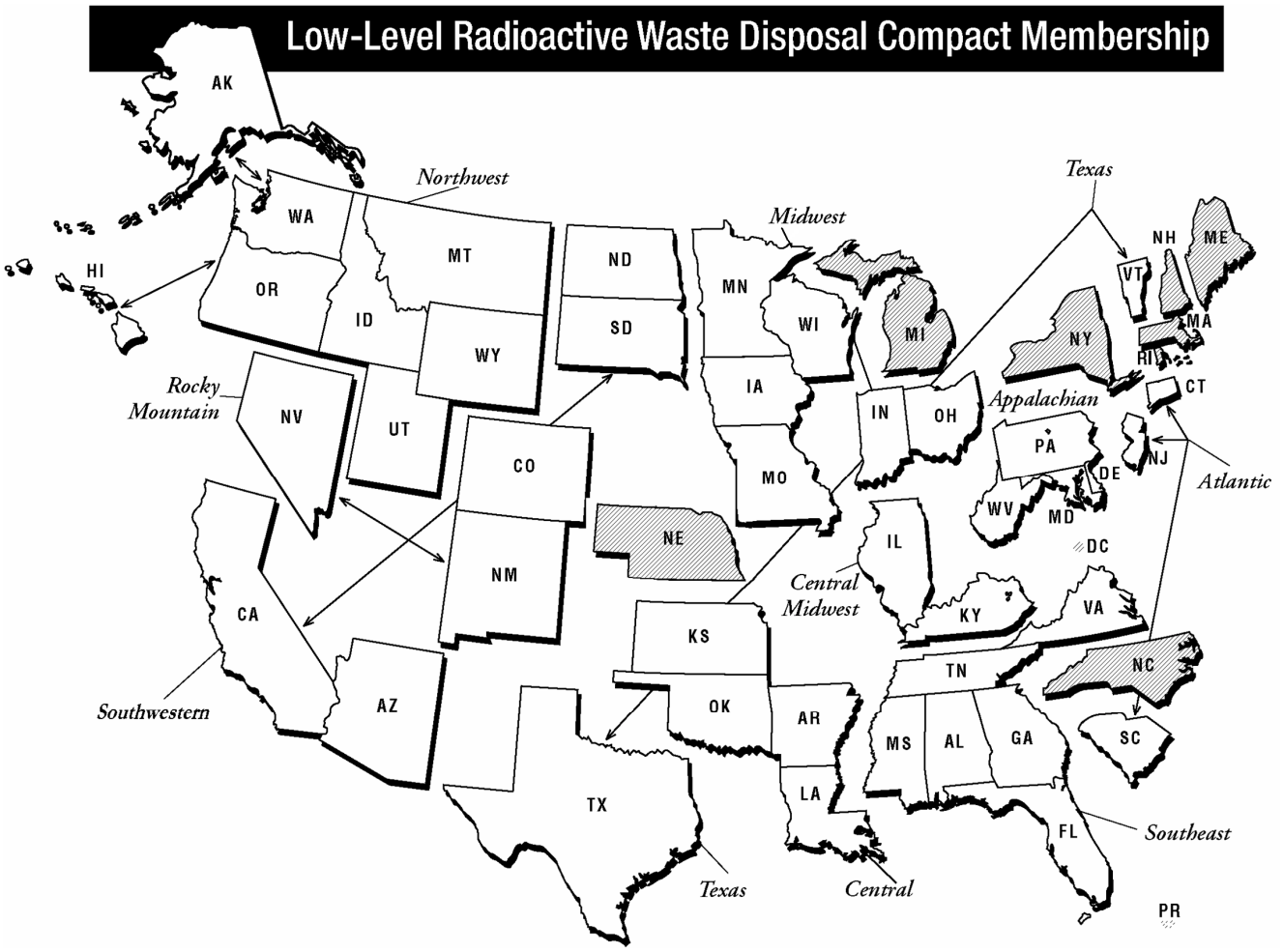
- GAO homepage (access to reports and testimony) .....**www.gao.gov**

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