

LLW *notes*

Volume 23, Number 5 September/October 2008

Low-Level Radioactive Waste Forum, Inc.

NRC Commissioner Jaczko Presents at LLW Forum Meeting

On September 12, 2008, NRC Commissioner Gregory Jaczko gave a presentation to attendees of the Low-Level Radioactive Waste Forum's fall meeting in Annapolis, Maryland. (See related story, this issue.) Jaczko provided similar remarks in a presentation at the Exchange Monitor's Second Annual RadWaste Summit in Las Vegas, Nevada on September 3. The full text of Jaczko's prepared remarks, titled "The Key to Future Low-Level Waste Disposal Solutions—Public Involvement," were printed in the U.S. Nuclear Regulatory Commission's news releases (item no. S-08-033) for the week ending September 12, 2008.

Importance of Public Participation

In his remarks, which Jaczko cautioned were his own and not necessarily reflective of the consensus of the agency's four-member Commission, Jaczko strongly advocated the importance of public participation by stating that "public involvement and policy decisions must go hand in hand." Jaczko argued that even the best technical solutions would not achieve success if the public does not feel heard.

No Imminent Crisis But Opportunity for Solutions

Jaczko said that he does not believe that the current low-level radioactive waste management

environment constitutes a crisis, but rather "a long-term problem that will require a complex solution." He noted that the decision to extend licenses by a large portion of the current fleet of reactors has eased the demand for low-level radioactive waste disposal in the short-term and created an opportunity to develop solutions. In this regard, Jaczko encouraged all stakeholders—including communities that may have an interest in hosting disposal sites, producers of the waste, processors and disposal facility operators, and government agencies—to work together to find workable solutions.

Consideration of the Use of RCRA Facilities

While Jaczko's remarks did not advocate changes to the Low-Level Radioactive Waste Policy Act of

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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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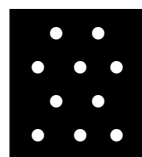
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Key to Abbreviations

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

(Continued from page 1)

1980 and its 1985 amendments, he did offer support for pursuit of a national debate about the use of current hazardous waste disposal facilities as an option for the disposal of some very low activity low-level radioactive waste. Indeed, Jaczko noted that the Commission previously directed the Advisory Committee on Nuclear Waste (ACNW) to consider this issue. On April 30 of this year, ACNW issued a report which raised additional items that will need to be addressed to move forward with such an option, including land ownership and institutional controls, human intrusion mitigation measures, financial assurance requirements, and predictive performance assessments.

Impact of Decommissioning on Public Acceptance

In concluding his remarks, Jaczko touched upon the related broader issue of decommissioning and its impact on public acceptance.

“Decommissioning sites so that communities are not restricted in the future use of these locations builds public confidence,” he stated. Jaczko acknowledged that some licensees, particularly non-power plant sites, may not have the resources to fully clean up and return sites to green fields due to the high costs of disposal. However, he stressed the importance of this problem to host communities and regulators and encouraged all stakeholders to work together to find viable alternatives.

Meeting NRC Regulatory Standards

Finally, Jaczko stressed that “all options should have at their foundation a requirement to meet standards comparable to those in NRC’s regulations.” Doing so, he argued, is critical to ensuring public acceptability and eventual success. Jaczko concluded his remarks by encouraging stakeholders to engage NRC staff and to search for “publicly acceptable approaches to this important national issue.”

Appalachian Compact Hosts Fall 2008 LLW Forum Meeting Annapolis, Maryland

The Low-Level Radioactive Waste Forum met in Annapolis, Maryland at the Westin Hotel on September 11-12, 2008. The Appalachian States Low-Level Radioactive Waste Compact Commission sponsored the meeting.

Executive Committee Meeting

The Executive Committee met in closed session on Thursday, September 11, to discuss and review financial, organizational, and other issues. During the course of the meeting, members received the 2008 financial report and results of an annual audit of the organization from the Contractor and the Treasurer. The Board of Directors also reviewed and adopted a budget for 2009 and determined to maintain membership and subscription dues and meeting registration fees at the current level for the coming year.

The Board also received reports from future meeting hosts and discussed program issues. Items addressed included membership and subscription activities, the web site, working groups and other future endeavors.

The LLW Forum will once again organize a panel session for the Waste Management '09 Symposium to be held in Phoenix, Arizona during the first week of March. During the Executive Committee meeting, the Board discussed various topic ideas and potential speakers. The session will focus on Hot Topics in Commercial LLRW Management and Disposal. Over the next few months, the LLW Forum will settle on specific session topics and invite speakers to participate in the panel.

Fall 2008 LLW Forum Meeting

Topics and issues covered at the Annapolis meeting included, among others, the following:

Low-Level Radioactive Waste Forum, Inc. *continued*

- ♦ current issues facing the U.S. Department of Energy Environmental Management office's waste management program;
- ♦ the U.S. Nuclear Regulatory Commission's guidance on extended interim storage of low-level radioactive waste by fuel cycle and materials licensees;
- ♦ concentration averaging and the mixing or blending of different classes of low-level radioactive waste;
- ♦ NRC/DOE's joint workshop on U.S. nuclear power plant life extension (research and development) beyond 60 years;
- ♦ activities of the Department of Defense Executive Agency to address the challenges of waste disposal;
- ♦ worker exposure to radiation at drinking water treatment systems;
- ♦ results of initial agency monitoring of radionuclides in drinking water;
- ♦ management of DOE's inventory of depleted uranium hexafluoride;
- ♦ EnergySolutions' proposal to import radioactive waste from Italy;
- ♦ congressional staff perspectives regarding waste management issues and the U.S. Congress;
- ♦ update regarding the Nuclear Energy Institute's executive working group on low-level radioactive waste management issues;
- ♦ waste management perspectives from NRC Commissioner Jaczko;
- ♦ waste management responsibilities of DOE including progress and challenges;
- ♦ international initiatives regarding low-level radioactive waste management and their

potential application to the United States;

- ♦ sound environmental practices for tritium exit signs;
- ♦ the Southeast Compact Commission's position statement to promote a national policy regarding ionizing radiation; and,
- ♦ the Pennsylvania Department of Environmental Protection's use of the Manifest Information Management System (MIMS) for the reporting of low-level radioactive waste generation for the Appalachian Compact.

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

Registration Now 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 a location near Salt Lake City, Utah. The state is tentatively considering a location in Park City on dates during the latter half of the month of September 2009.

2010 Meetings

The State of Texas and Waste Control Specialists 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 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.

Atlantic Compact/New Jersey

Decommissioning Update re NJ Site

On September 30, 2008, the U.S. Nuclear Regulatory Commission hosted a meeting to provide the public with an update on its review of a decommissioning plan for the Shieldalloy Metallurgical Corporation facility in Newfield, New Jersey. The meeting—which was held at the Edgerton Memorial Elementary School—included information booths at which attendees were able to ask questions of the staff regarding the decommissioning plan and the agency’s ongoing review of the proposal. Topics discussed at the booths included:

- ◆ radiological dose assessment;
- ◆ the engineered barrier design proposed for radioactive waste material at the site;
- ◆ financial assurance;
- ◆ groundwater and surface water issues; and,
- ◆ the environmental impact assessment being conducted as part of the decommissioning plan review.

The Shieldalloy facility in Newfield was used for smelting and alloy production from 1940 through 2001. One of the raw materials used by the company was a niobium ore called pyrochlore, which contains uranium and thorium and is subject to NRC licensing requirements. The majority of the radioactive material remaining at the site consists of slag generated during production operations and dust from baghouses.

The decommissioning plan submitted by Shieldalloy to NRC in 2006 proposes that all of the materials containing uranium and thorium would be consolidated into a single pile on a portion of the site’s storage yard. The material would then be shaped, graded and covered with an engineered barrier. The plan also calls for the remainder of the

site to be released for unrestricted use, provided that the company can demonstrate that there was no residual contamination above allowable levels.

The focus of NRC’s review is to determine if the decommissioning proposal would meet the agency’s requirements for protecting public health and safety and the environment. That would include ensuring that no member of the public would receive exposure to radiation from the material in excess of allowable regulatory limits. The review entails both safety and environmental evaluations. NRC staff earlier discussed its review of the plan during public meetings held on December 5 and 12, 2007.

Shieldalloy’s decommissioning plan is available on the NRC’s web site through the agency’s ADAMS electronic document system at <http://www.nrc.gov/reading-rm/adams/web-based.html> using docket number 04007102.

Northwest Compact/State of Utah

EnergySolutions Anticipates Delays in Accelerated Decommissioning

In a press release dated October 14, 2008, EnergySolutions states that “[t]he financial crisis that is impacting the United States and world markets will delay EnergySolutions’ ability to accelerate the decommissioning of identified nuclear power plant assets, a key growth initiative of the company.”

NRC Decision re Trust Funds

The press release follows a decision by the U.S. Nuclear Regulatory Commission, which maintains oversight for the use of decommissioning funds, to deny a petition for rulemaking from EnergySolutions that would allow the use of decommissioning trust funds for the processing and disposal of major radioactive components (“large components”) that

States and Compacts *continued*

have been removed from operating nuclear reactors. Nonetheless, NRC did indicate that it would consider on a case-by-case basis exemptions from its guidance against the use of decommissioning trust funds for the disposal of large components.

EnergySolutions' Response

In response to the NRC decision, NRC issued in part the following statement:

EnergySolutions will continue to work with the NRC and its nuclear utility customers to seek appropriate exemptions and pursue NRC rulemaking changes. The Commission has indicated that it believes that the early removal and disposal of large components is important and it will continue to work on alternative methods to accomplish this objective.

EnergySolutions continues to explore other innovative funding options with a number of utilities to secure the decommissioning of these large components in the near future.

Impact on Zion Project

At issue is an agreement between EnergySolutions and Exelon Generation Company to accelerate the decommissioning of the company's Zion Nuclear Power Station in Zion, Illinois. The station ceased operations in February 1998. NRC approval for the transfer of the license from Exelon to the company's decommissioning subsidiary, Zion Solutions, is expected by mid-December. The parties were seeking release of trust funds to remove major components—defined as parts of the nuclear facility that require special handling with a weight of more than 20,000 pounds—from the site. EnergySolutions press release states that it “does not believe that it is in the best interests of its stakeholders to finalize the transfer of the Zion Nuclear Power Station assets until after the financial markets stabilize and the company reaffirms that there is sufficient value in the Zion decommissioning trust funds to ensure adequate

funds for the accelerated decommissioning of the plant.” According to the release, Exelon officials support this strategy. EnergySolutions and Exelon have until December 2009 to close the transaction.

Financial Impacts

In March 2007, EnergySolutions filed papers to make an initial public stock offering with a maximum aggregate of \$500 million. It began trading publicly on the New York Stock Exchange under the ticker symbol ES on November 15, 2007. Following the NRC's decision on the use of decommissioning trust funds, the company estimated net income in the range of \$0.50 to \$0.60 per share, based on 88.3 million fully diluted shares outstanding. The company anticipates that the financial performance for fiscal year 2009 will be similar to that of fiscal year 2008.

For additional information, please contact Mark Walker of EnergySolutions at (801) 649-2194.

Southeast Compact/State of Tennessee

EnergySolutions' Tennessee Facilities Receive VPP Status

Two of EnergySolutions facilities have officially received Voluntary Protection Program (VPP) status by the Tennessee Department of Labor and Workforce Development. Employees at both the Bear Creek and Gallaher Road facilities were recognized at a ceremony for effective worksite-based safety and health programs. VPP status represents official recognition from the Occupational Health and Safety Administration (OSHA) of outstanding efforts by employers and employees who have achieved exemplary occupational safety and health cultures. To date, 27 companies in Tennessee have earned VPP status in the 26-year history of the award.

States and Compacts *continued*

"This is an incredible accomplishment for our employees at Bear Creek and Gallaher Road," said EnergySolutions' CEO and Chairman Steve Creamer. "The credit goes to every employee at both facilities for their dedication and commitment to health and safety. I want to personally congratulate and thank every one of them for their tremendous accomplishment."

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

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

Texas Compact/State of Texas

Texas Hosts Stakeholder Meeting re LLW Disposal Fees: Rules Published & Minutes Available On-Line

The Texas Commission on Environmental Quality (TCEQ) hosted a roundtable discussion for stakeholders on October 1, 2008 on the rulemaking for Phase 2 of Implementation of SB 1604 and HB 3838 in order to allow further discussion on the draft new Subchapter N in Chapter 336 which will establish fees for low-level radioactive waste disposal. The draft new Subchapter N includes commission powers, factors considered for maximum disposal rates, initial determination of rates and fees, revisions to maximum disposal rates, extraordinary volume adjustments, hearings on maximum disposal rate disputes, revenue statements, and contracted disposal rates.

The rules were approved for proposal at the August 20, 2008 Commissioner's Agenda and were published in the *Texas Register* on September 5, 2008. Public hearings were held on August 15 and September 16 of this year. Minutes from the hearings can be found on the TCEQ's web site at the below-identified address.

The public comment period ended on October 6, 2008. TCEQ's Executive Director is preparing responses to comments and making changes to the rule as appropriate.

Adoption of this rulemaking is listed on the agenda for the upcoming TCEQ meeting on January 28, 2009. However, the responses to comments, rule language, and preamble will be available when the Executive Director files back up on January 9, 2009.

The draft rule (including information pertaining to fee setting) may be found at http://www.tceq.state.tx.us/assets/public/legal/rules/rule_lib/proposals/07029336_pro.pdf. The minutes from the August 15 and September 16 stakeholder meetings are now available at <http://www.tceq.state.tx.us/permitting/radmat/sb1604group.html>. For additional information, please contact Ms. Beryl Thatcher at bthatche@tceq.state.tx.us or at (512) 239-6466.

Background

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

SB 1604 SB 1604 concerns the transfer of certain regulatory responsibilities for radioactive waste management licensing from the Texas Department of State Health Services (DSHS) to the TCEQ.

States and Compacts *continued*

(See *LLW Notes*, May/June 2007, pp. 9-10.) Prior to its enactment, TCEQ had jurisdiction to regulate and license the disposal of radioactive substances except for by-product material. SB 1604, however, provides that TCEQ will also have jurisdiction to regulate and license:

- ♦ the processing or storage of low-level radioactive waste or naturally occurring radioactive material (NORM) waste received from other persons, except oil and gas NORM;
- ♦ the recovery or processing of source material;
- ♦ the processing of by-product material; and,
- ♦ sites for the disposal of radioactive waste, by-product material or NORM waste.

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

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

HB 3838 further requires that a person developing an application for an area permit for in situ uranium mining within a groundwater conservation district shall provide certain, specified information to the district. And, it clarifies TCEQ authority for right

of entry inspection and investigation to include production and monitoring wells as defined and any business or operating records required to be maintained for such wells.

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

Projected Schedule

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

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

TCEQ to Consider Condemnation Proceedings re Mineral Interests at Proposed LLRW Site

On November 19, 2008, the Commissioners of the Texas Commission on Environmental Quality (TCEQ) are scheduled to consider a petition from Waste Control Specialists (WCS) requesting that the attorney general institute condemnation proceedings to acquire mineral interests associated with the proposed low-level radioactive waste disposal facility in Andrews County, Texas. In particular, WCS requests that condemnation proceedings be instituted against 13 individuals

and/or entities who have not sold their interests in order to acquire a fee simple interest in mineral rights associated with the proposed facility.

Condemnation Proceedings

TCEQ's Executive Director, the Office of Public Interest Council, and the 13 mineral interest owners were encouraged via letter dated October 1, 2008 to file briefs with the Texas Commission on Environmental Quality Chief Clerk's Office no later than 5:00 p.m. on Monday, October 20, 2008. The same letter encouraged WCS to respond to the briefs by no later than 5:00 p.m. on Friday, October 31, 2008.

The matter has been set on the TCEQ's public meeting agenda for Wednesday, November 19, 2008, pursuant to the Commission's Resolution issued on August 14, 2006 in Docket No. 2006-0973-RES. The meeting will take place in Room 201S of Building E at 12118 N. Interstate 35 in Austin, Texas. The Commission will take oral argument on the matter.

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.)

For additional information, 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.

State of Nebraska

Oral Arguments Heard re Crowe Butte Renewal

The U.S. Nuclear Regulatory Commission's Atomic Safety and Licensing Board (ASLB) recently heard oral arguments regarding the application of Crow Butte Resources, Inc. to renew its license for its in-situ leach uranium recovery facility in Crawford, Nebraska. The ASLB hearings were held in Chadron, Nebraska on September 30 and October 1 of 2008.

Petitions to intervene in the license renewal proceeding were previously filed by the Oglala Sioux Tribe, the Oglala Delegation of the Great Sioux Nation Treaty Council, the Western Nebraska Resource Council and several individuals. The oral arguments were scheduled to, among other things, address the standing of these potential parties to intervene and the admissibility of their various environmental and technical contentions.

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

Licensing boards typically consist of three administrative judges. This particular proceeding's board included two technical experts and an attorney, with a second attorney serving as a special assistant to the board.

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

Utah and RM Compact Granted Intervenor Status in Suit Challenging Northwest Compact's Authority

On August 28, 2008, the U.S. District Court for the District of Utah, Central Division, granted an Unopposed Motion to Join the State of Utah as a defendant in a lawsuit filed by *EnergySolutions* against the Northwest Interstate Compact on Low-Level Radioactive Waste Management and against Michael Garner solely in his official capacity as Executive Director of the Northwest Compact. Subsequently, on September 18, 2008, the court granted a separate, unopposed motion by the Rocky Mountain Low-Level Radioactive Waste Compact to also intervene as a defendant in the action.

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 *EnergySolutions*’ privately owned, commercial, low-level radioactive disposal site in Clive, Utah.” (See *LLW Notes*, May/June 2008, pp. 25-28.)

Defendants’ Motion to Join Utah as a Defendant

Arguments On August 26, 2008, the Northwest Compact and Michael Garner filed an unopposed motion with the court to join Utah as a defendant. In so doing, they argue that the compact, state and facility operator maintain a “triangular relationship” which necessitates that the state be joined in order to represent its “unique position and interest” in the proceeding.

Among other things, the motion claims that Utah has an interest in the lawsuit because the state

- ♦ is a member of the compact with a unique position as the host state of the Clive facility with veto authority over actions relating to the facility;
- ♦ approved both the Third Amended Resolution and Order and subsequent Clarifying Resolution under which the defendants assert that *EnergySolutions* currently operates; and,
- ♦ is the governmental entity that licenses and regulates the Clive facility and, in such capacity, agrees that *EnergySolutions* must obtain compact approval for out-of-compact waste including that proposed to be imported from Italy.

The motion concludes that disposition of the lawsuit may impede the state’s interests as a member of the compact and as licensor of the Clive facility. The case’s disposition, according to the defendants, may also affect how the state exercises its veto authority over arrangements considered by the compact and how it licenses the facility in the future. In conclusion, the defendants note that the compact’s interests in this proceeding may not directly align with those of the state.

Response While *EnergySolutions* stated that it does not agree with many of the assertions and legal conclusions set forth in the defendants’ motion and accompanying memorandum, the company acknowledged that Utah asserts an interest and has a desire to participate. Accordingly, *EnergySolutions* did not object to entry of an order making the state a party to the action, subject to conditions that were agreed upon and stipulated by the parties.

Order Pursuant to the terms of the court’s order granting Utah party status as a defendant in the case, the state has 15 days to file an answer to *EnergySolutions*’ first amended complaint. The state is required to comply with previously established discovery and case management schedules and to coordinate with the defendants to avoid duplication of discovery. The state may not file separate claims for relief unless *EnergySolutions* seeks leave to file a second amended complaint.

For additional information, please contact Bill Sinclair, Deputy Director of the Utah Department of Environmental Quality, at (801) 536-4405.

Rocky Mountain's Motion to Intervene as a Defendant

Arguments In its motion to intervene as a party defendant, the Rocky Mountain Compact asserts that it has a right to intervene because

- ♦ as a Congressionally-approved compact, it has the right to intervene in any administrative or judicial proceeding involving low-level radioactive waste; and,
- ♦ it has an interest in the subject matter of the proceeding and is so situated that the case's disposition may as a practical matter impair or impede its ability to protect that interest.

The compact also argues that intervention should be allowed because "there are common questions of law and fact regarding the compact system which impact the Rocky Mountain Compact" and because the case "involves claims based upon state and federal regulations, orders, requirements, and/or agreements which relate to the management of low-level radioactive waste and the compact system."

Response While EnergySolutions stated that it does not agree with many of the assertions and legal conclusions set forth in the defendants' motion and accompanying memorandum and does not agree that the Rocky Mountain Compact is a proper party to the action, the company acknowledged that the court has discretion to permit intervention in certain circumstances. Accordingly, EnergySolutions did not object to entry of an order making the state a party to the action, subject to conditions that were agreed upon and stipulated by the parties.

Order Pursuant to the terms of the court's order granting the Rocky Mountain Compact party status as a defendant in the case, the compact has 15 days to file an answer to EnergySolutions' first amended complaint and must file their memoranda in opposition to the plaintiff's motion for summary

judgment on Count I no later than October 21, 2008. The compact is required to comply with previously established discovery and case management schedules and to coordinate with the defendants to avoid duplication of discovery. The compact may not file separate claims for relief unless EnergySolutions seeks leave to file a second amended complaint.

For additional information, please contact Leonard Slosky, Executive Director of the Rocky Mountain Compact, at (303) 825-1912.

Rocky Mountain Compact's Answer to the First Amended Complaint

On August 29, 2008, the Rocky Mountain Compact submitted its answer in response to EnergySolution's first amended complaint.

Responses to Arguments In its answer, the Rocky Mountain Compact affirmatively alleges that the facility is subject to the Northwest Compact's authority and constitutes a "regional disposal facility" under the terms of the Northwest Compact. In addition, the compact denies EnergySolution's allegation that the Clive facility has never been operated under a compact. The Rocky Mountain Compact also denies that the Northwest Compact's actions regarding the proposed importation of foreign waste to the Clive facility violate federal statutes and/or the Commerce Clause of the U.S. Constitution.

Affirmative Defenses As affirmative defenses, the Rocky Mountain Compact charges that

- ♦ the complaint fails to state a claim upon which relief can be granted and raises non-justiciable political questions;
- ♦ the court lacks personal jurisdiction over the defendants;
- ♦ venue is not proper;
- ♦ one or more of the listed claims are barred because they are not ripe for adjudication;

- ♦ the plaintiff failed to exhaust its administrative remedies, waived one or more of the listed claims, and lacks standing to bring one of more of the listed claims; and,
- ♦ the requested relief may be barred by the Eleventh Amendment to the U.S. Constitution.

Background

The action arises out of a proposal from EnergySolutions 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 EnergySolutions' Bear Creek facility for recycling and beneficial reuse with any resultant waste being disposed at the Clive facility. EnergySolutions 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 EnergySolutions' 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, EnergySolutions 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, EnergySolutions 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, or Michael Garner, Executive Director of the Northwest Compact, at (360) 407-7102.

Federal Agencies and Committees

Advisory Committee on Medical Uses of Isotopes

New ACMUI Members Appointed

On September 10, 2008, the U.S. Nuclear Regulatory Commission announced the appointment of Steven Mattmuller and Debbie Gilley as new board members on the Advisory Committee on the Medical Uses of Isotopes (ACMUI). The ACMUI was established in 1958 and advises the NRC on policy and technical issues related to the regulation of the medical use of radioactive material.

Steven Mattmuller has been serving as the nuclear pharmacist representative on the ACMUI. He received his Bachelor of Science in Pharmacy from Ohio Northern University and a Master of Science in Radiopharmacy from the University of Southern California. Mattmuller, who is board-certified in nuclear pharmacy, has held clinical staff positions at St. John's Mercy Medical Center in St. Louis, Missouri and at Kettering Medical Center in Kettering, Ohio—where he currently serves as Chief Nuclear Pharmacist. He has participated in a number of professional societies and served on numerous institutional and professional society committees and is currently the Chair-Elect of the Nuclear Pharmacy Practice Section of the Academy of Pharmacy Practice and Management of the American Pharmacists Association.

Debbie Gilley has been serving as the state government representative on the ACMUI. She earned Bachelor of Science and Masters in Public Administration degrees from Florida State University. She is currently an Environmental Manager for Florida's Bureau of Radiation Control, where she is responsible for staff development (including statewide training) quality assurance, public relations and strategic plan coordination. She participates in emergency response activities as the assistant operations officer and investigator of medical events. Gilley has more than 20 years of

experience with the Florida Bureau of Radiation Control, working as a manager and evaluator in the radioactive materials program, the technology certification program and inspection program. She is Past-Chair of the Conference of Radiation Control Program Directors and is also a member of the Health Physics Society, American Association of Physicists in Medicine and is a consultant to the International Atomic Energy Agency.

Advisory Committee on Reactor Safeguards

ACRS Holds October Meeting

The U.S. Nuclear Regulatory Commission's Advisory Committee on Reactor Safeguards (ACRS) held a public meeting at agency headquarters in Rockville, Maryland on October 2-4, 2008. ACRS advises the Commission, independently from NRC staff, on safety issues related to the licensing and operation of nuclear power plants.

During the course of the meeting, committee members discussed several issues of current interest, including the license renewal application for the Shearon Harris Nuclear Power Plant. Other topics that were covered included the Economic Simplified Boiling Water Reactor (ESBWR) design certification application, historical perspectives and insights on reactor consequence analyses, and the status of resolution of Generic Safety Issue (GSI) 191: Assessment of Debris Accumulation on Pressurized-Water Reactor (PWR) Sump Performance.

ACRS agendas are available on the NRC's web site at <http://www.nrc.gov/reading-rm/doc-collections/acrs/agenda/2008>.

U.S. Department of Energy

Yucca Mountain Application Docketed and EIS Adopted

On September 8, 2008, the U.S. Nuclear Regulatory Commission formally docketed the U.S. Department of Energy's license application for authorization to construct a spent nuclear fuel and high-level radioactive waste repository at Yucca Mountain, Nevada. In addition, agency staff recommended that the Commission adopt, with further supplementation, DOE's Environmental Impact Statement (EIS) for the repository project.

DOE had submitted the application to NRC on June 3, 2008. The application, which is 8,600 pages long, details DOE's plans "to safely isolate spent nuclear fuel and high-level radioactive waste in tunnels deep underground at Yucca Mountain, a remote ridge on federally controlled land in the Mojave Desert 90 miles northwest of Las Vegas." The waste is currently being stored at 121 temporary locations in 39 states throughout the nation.

NRC Actions

Docketing of the application means that NRC staff have determined that it is sufficiently complete to begin a full technical review. Docketing does not indicate whether the Commission will approve or reject the construction authorization for the repository, nor does it preclude the Commission or agency staff from requesting additional information from DOE during the course of a comprehensive technical review of the application.

In addition to docketing the application, NRC staff determined that it would be practicable for the agency to adopt DOE's EIS and the related supplements. However, staff is requesting that DOE supplement some aspects of its groundwater analyses.

A notice of docketing has been published in the *Federal Register*. A subsequent *Federal Register* notice

announced the opportunity for interested parties to seek an adjudicatory hearing before the NRC's Atomic Safety and Licensing Board (ASLB) regarding adoption of the EIS or the substance of the license application. (See related story, this issue.)

NRC staff's report on its adoption review is available on the NRC's ADAMS online document system at <http://www.nrc.gov/reading-rm/adams/web-based.html> using access number ML082420342.

Next Steps

Docketing of the application triggers provisions in the National Waste Policy Act of 1982 (NWPA) and NRC regulations that provide for a three-year licensing process for NRC to review the Yucca Mountain application and determine whether to authorize construction. Congress has given the NRC an option to request a one-year extension. NRC has already noted that it expects to need a fourth year and has made clear that meeting this deadline is contingent upon the Congress providing sufficient resources in a timely manner.

NRC's review of the application is expected to involve more than 100 staff and contractor employees with expertise in several scientific disciplines, including geochemistry, hydrology, climatology, structural geology, volcanology, seismology, health physics, security, and law, as well as chemical, mechanical, nuclear, mining, materials and geological engineering. Participating in the review process will be staff at NRC's headquarters in Rockville, Maryland; the Region IV office in Arlington, Texas; and, the NRC's office in Las Vegas, Nevada. Technical assistance will be provided to the NRC by the Center for Nuclear Waste Regulatory Analysis in San Antonio, Texas—a federally funded research and development center.

The ASLB expects to form several boards of three judges each to conduct multiple hearings regarding the Yucca Mountain application. Potential parties to these hearings indicated earlier this year that they expect to file as many as 650 contentions. The ASLB Panel includes 16 full-time judges with legal

and technical expertise. Many of the hearing proceedings will be conducted at the NRC's Las Vegas Hearing Facility, although some will be held at agency headquarters.

Background

The NWPA, as amended, created a process for the identification, characterization and approval of a site for a permanent geologic repository and for its licensing by the NRC. In 2002, over strong objections from the State of Nevada, President George W. Bush and both chambers of Congress accepted the recommendation of then-Energy Secretary Spencer Abraham and designated Yucca Mountain as the site for America's first permanent repository. (See *LLW Notes*, January/February 2002, pp. 16-17 and *LLW Notes*, March/April 2002, p. 26.)

A Final EIS, as well as approximately 200 key supporting documents, accompanies the license application submitted by DOE. In addition, DOE has made available more than 3.6 million documents relating to the Yucca Mountain licensing proceeding on the NRC's Licensing Support Network.

For additional information about NRC's role in regulating the disposal of high-level nuclear waste, please go to <http://www.nrc.gov/waste/hlw-disposal.html>. For early access to the application and related documents, please go to the NRC's Licensing Support Network at <http://lsnnet.gov/>.

Yucca Review Meeting Held in Nye County

On September 23, 2008, a public meeting was held in Nye County, Nevada to discuss the review process for the U.S. Department of Energy's application to build and operate the proposed high-level nuclear waste repository at Yucca Mountain. The proposed facility site is located in Nye County. The U.S. Nuclear Regulatory Commission, which is charged with review of the application, hosted the meeting for members of the public.

The meeting provided an opportunity for residents of Nye County to obtain information about how the NRC will decide whether to authorize construction of the proposed repository. It was held at the Longstreet Inn from 5 to 7 pm.

"We want the people in Nye County to understand our roles and responsibilities in reviewing the application," said Lawrence Kokajko, Director of the Division of High-Level Waste Repository Safety in the NRC's Office of Nuclear Material Safety and Safeguards.

During the course of the meeting, NRC staff gave presentations that describe the agency's decision to accept the Yucca Mountain application and to adopt, with supplements, DOE's Environmental Impact Statement. (See related story, this issue.) An overview of NRC's review and decision process was also presented and NRC staff answered the public's questions about the Yucca Mountain review. NRC staff members were available for an hour prior to the meeting to talk informally with local residents and other interested members of the public.

DOE submitted the Yucca Mountain application on June 3 and NRC accepted it for review on September 8. If approved, Yucca Mountain would become the nation's permanent disposal site for spent nuclear fuel and other high-level radioactive waste.

A detailed agenda of the September 23 meeting can be found on the NRC's electronic document database, ADAMS, by entering ML082560789 in the search engine at <http://adamswebsearch.nrc.gov/dologin.htm>. Additional information on the Yucca Mountain licensing process is available on the agency's web site at <http://www.nrc.gov/waste/hlw-disposal/yucca-lic-app.htm>.

U.S. Nuclear Regulatory Commission

Italian Waste License Application & Hearing Requests Put on Hold Pending Jurisdictional Litigation

On October 6, 2008, the U.S. Nuclear Regulatory Commission issued an order holding in abeyance until further notice review of EnergySolutions' applications for a license 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.)

The order also holds in abeyance pending hearing requests on the license applications that were previously filed by the Utah Attorney General's Office on behalf of Governor Jon Huntsman, Jr., as well as separate hearing requests filed by the Nuclear Information and Resource Service (NIRS) and a variety of organizations. (See *LLW Notes*, May/June 2008, pp. 9-12.)

NRC's Order

Authority and Regulations In its order, NRC notes that the Atomic Energy Act provides the

agency with responsibility for authorizing the import and export of byproduct, source and special nuclear material. Pursuant to the agency's regulations, NRC will issue a low-level waste import license if it finds that: (1) the proposed import will not be inimical to the common defense and security; (2) the proposed import will not constitute an unreasonable risk to the public health and safety; (3) the environmental requirements of Part 51 have been satisfied (to the extent applicable); and, (4) an appropriate facility has agreed to accept the waste for management or disposal.

Analysis The order acknowledges that there is a dispute between the Northwest Interstate Compact on Low-Level Radioactive Waste Management and EnergySolutions concerning the compact's jurisdiction over the Clive facility and states as follows:

The NRC will defer action on the pending import license application until the dispute over the authority of the Northwest Compact is resolved or EnergySolutions outlines an alternative plan for disposal of the imported LLW. As we have explained in our Statement of Considerations for the Final Rule governing LLW imports, "[t]he NRC will not grant an import license for waste intended for disposal unless *it is clear* that the waste will be accepted by a disposal facility, host state, and compact (where applicable)." This is part of the Commission's "determination regarding the appropriateness of the facility that has agreed to accept the waste for management or disposal." In other words, an integral aspect of the Commission's determination of a facility's appropriateness for disposal of imported waste is whether the facility can actually accept that waste for disposal.

While both EnergySolutions and the State of Utah briefed this issue, the Commission will not wade into the legal dispute between EnergySolutions and the Northwest Compact now before the

federal district court in Utah. A Commission decision on the extent of the Northwest Compact's exclusionary jurisdiction would not be binding on the courts. Until a court of competent jurisdiction determines that the Northwest Compact cannot exclude foreign waste from the Clive facility, the Northwest Compact itself indicates to the Commission that it chooses not to exercise such authority, or some other basis upon which to address the disposal question arises, the Commission is not in a position to determine that the Clive facility is appropriate for disposal of this particular imported LLW as proposed in the application as filed. Therefore, it would be inefficient to devote further adjudicatory (and NRC Staff) resources to this proceeding now.

(citations omitted)

Reporting Requirements The order directs EnergySolutions "to provide the Commission with status reports every six months until there is a judicial resolution of the pending lawsuit or the jurisdictional dispute is otherwise resolved, or earlier if there are pertinent developments that could affect the Commission's decisions on these applications."

Background

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

imported material would be disposed as Class A LLW at the Clive facility.

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

Litigation On May 5, 2008, EnergySolutions filed a lawsuit in the U.S. District Court for the District of Utah, Central Division, against the Northwest Compact and against Michael Garner solely in his official capacity as Executive Director of the Northwest Compact. The action seeks, among other things, a declaratory judgment "to clarify the authority of the Northwest Compact to govern EnergySolutions' privately owned, commercial, low-level radioactive disposal site in Clive, Utah." (See *LLW Notes*, May/June 2008, pp. 25-28.)

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

Hearing Requests On June 10, 2008, on behalf of Utah Governor Jon Huntsman, Jr., the state's Attorney General's Office filed with NRC a request for a hearing and a petition for leave to intervene in the license applications filed by EnergySolutions. Also on June 10, multiple organizations made a

joint filing to the NRC opposing EnergySolutions' license applications, supporting Utah's request for a hearing in the State of Utah, and requesting a public hearing in middle Tennessee. NIRS also filed a separate, independent request for a hearing that includes issues specific to both Tennessee and Utah. (See *LLW Notes*, May/June 2008, pp. 9-12.)

Larry W. Camper Elected to Waste Management Symposia Board

Recently, Larry W. Camper was elected to the Waste Management Symposia Board of Directors for a three-year term commencing in September 2008. As a member of the board, Camper will assist in managing the business affairs of the Symposia. Prior to this appointment, Camper has served as a member of the Program Advisory Committee for the annual Symposia conference for several years.

Camper currently serves as the Director of the Division of Waste Management & Environmental Protection for the U.S. Nuclear Regulatory Commission's Office of Federal & State Materials & Environmental Management Programs. In this official capacity, he serves as the agency's liaison to the LLW Forum and often represents the agency at LLW Forum meetings.

The Waste Management Symposia, a non-profit corporation dedicated to education and opportunity, provides an annual forum for discussing and seeking solutions to the safe management of radioactive waste and radioactive materials. The annual conferences, now going into their 36th year, draw some 2,000 persons from throughout the world and provide significant opportunities for education, professional growth and networking—as well as business opportunities.

The next symposia will be held on March 1-5, 2009 at the Phoenix Convention Center in Phoenix, Arizona.

For additional information on the Waste Management Symposia, please go to <http://www.wmsym.org/>.

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

- ♦ issued a supplemental safety evaluation report for the license renewal application of the Oyster Creek Nuclear Generating Station in Toms River, New Jersey;
- ♦ heard oral arguments on an issue regarding the proposed Oyster Creek relicensing; and,
- ♦ determined to renew the operating license for the James A. Fitzpatrick Nuclear Power Plant in Oswego, New York for an additional 20 years of operation.

Oyster Creek Nuclear Plant

On September 18, 2008, an Atomic Safety and Licensing Board (ASLB) panel heard oral arguments on an issue regarding the proposed relicensing of the Oyster Creek Nuclear Generation Station. The next day, on September 19, NRC issued a supplemental safety evaluation report for the station's license renewal application.

ASLB Panel Hearing The ASLB panel heard contentions relating to a proposal by plant operator AmerGen Energy Company to prepare a 3-D model showing the effects of corrosion on the Lacey Township (Ocean County), New Jersey

Federal Agencies and Committees *continued*

plant's bulb-shaped, steel liner that surrounds the vessel—referred to as a drywell shell. During the adjudicative proceeding, lawyers for the parties involved responded to questions pertaining to the issue from the three judges on the ASLB panel. Members of the public were allowed to observe the proceedings but were not permitted to participate in the oral arguments.

Safety Evaluation Report The supplemental safety evaluation report issued by NRC clarifies commitments agreed to by AmerGen as part of the aging management program for the reactor's drywell shell. It also documents the NRC staff's evaluation of AmerGen's reanalysis of the effects of fatigue on reactor recirculation outlet nozzles. NRC asked AmerGen to conduct a new analysis when the staff determined that the company's original calculations used only one of six stress components typically used. The staff's evaluation determined that the original analysis was, in fact, considerably more conservative than the confirmatory analysis. Therefore, the original results were acceptable. The safety evaluation report does not identify new open items and there are no new license conditions resulting from this supplement.

Background The Oyster Creek plant is located approximately nine miles south of Toms River, New Jersey. Its current operating license expires on April 9, 2009. The licensee, AmerGen Energy Company, submitted a renewal application on July 22, 2005. The current 40-year operating license for the plant is set to expire on April 9, 2009.

After the renewal application was accepted for review, NRC provided an opportunity for interested parties to request a hearing challenging the renewal request. A coalition of environmental groups raised a single contention that was admitted for adjudication by the ASLB. The contention argued that the plant's aging management program for corrosion in the sandbed region of the drywell shell is inadequate. Following an evidentiary hearing in September 2007, the ASLB ruled that the contention lacked merit. In January 2008, the coalition filed an appeal. The recent ASLB

proceeding was intended to give the parties an opportunity to advocate their positions and to answer the judge's questions.

Information about the Oyster Creek renewal application and a copy of the supplemental safety evaluation report are available at <http://www.nrc.gov/reactors/operating/licensing/renewal/applications/oystercreek.html>.

James A. Fitzpatrick Nuclear Power Plant

On September 9, 2008, NRC announced that the agency has renewed the operating license for the James A. Fitzpatrick Nuclear Power Plant for an additional 20 years. The decision followed a comprehensive environmental review of the license renewal application, which concluded that there were no environmental impacts that would preclude renewal of the license for environmental reasons. Public meetings to discuss the environmental review were held near the plant in October 2006 and August 2007.

NRC Review After carefully reviewing the plant's safety systems and specifications, NRC staff concluded that there were no safety concerns that would preclude license renewal because the licensee had demonstrated the capability to manage the effects of plant aging. The final safety evaluation report was published last January. In addition, NRC conducted inspections of the plant to verify information submitted by the licensee.

ACRS Recommendation The Advisory Committee on Reactor Safeguards (ACRS)—an independent body of technical experts which advises the Commission—reviewed the safety evaluation report following its issuance. On March 20, 2008, ACRS issued its recommendation that the operating license for Fitzpatrick be renewed.

Background The Fitzpatrick plant is a boiling water reactor located approximately eight miles northeast of Oswego, New York. Its current operating license expires on October 17, 2014. The applicant, Entergy Nuclear Operations, Inc., submitted a renewal application on August 1, 2006.

Federal Agencies and Committees *continued*

Reports relating to the Fitzpatrick plant license renewal are available on the NRC web site at <http://www.nrc.gov/reactors/operating/licensing/renewal/applications.fitzpatrick.html>. The ACRS recommendation can be found at <http://www.nrc.gov/reading-rm/doc-collections/acrs/letters/2008/>.

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

- ♦ made available to the public COL applications for two new reactors at the Victoria County site near Victoria, Texas and for a new reactor at the Callaway site near Fulton, Missouri; and,
- ♦ announced the opportunity to participate in hearings on a COL application for two new reactors at the Vogtle site near Waynesboro, Georgia and for a new reactor at the Calvert Cliffs site near Lusby, Maryland.

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 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>.

Victoria County

On September 16, 2008, NRC staff made available to the public the COL application for two new reactors at the Victoria County site near Victoria, Texas. 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. The ESBWR is a 1,500 Mwe design currently under NRC review for possible certification.

Federal Agencies and Committees *continued*

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

The application, minus proprietary or security-related details, is available on the NRC website at <http://www.nrc.gov/reactors/new-reactors/col/victoria.html>. Information on the ESBWR review is available on the site at <http://www.nrc.gov/reactors/new-reactors/design-cert/esbwr.html>.

Vogtle

On September 16, 2008, NRC announced the opportunity to participate in a hearing on a COL application for two new reactors at the Vogtle site near Waynesboro, Georgia. Southern Nuclear submitted the application and associated information on March 31, 2008. The company is seeking a license to build and operate two AP1000 reactors at the site about 26 miles southeast of Augusta. 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.

On June 9, 2008, NRC staff determined that the application contains sufficient information for the agency to formally “docket,” or file, the application and begin its technical review. The docket numbers established for this application are 52-025 and 52-026. NRC has published a notice of opportunity to intervene in the *Federal Register*, which expires on November 17, 2008. Petitions may be filed by anyone whose interest may be affected by the proposed license, who wishes to participate as a party in the proceeding, and who meets criteria set out in NRC regulations.

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

[reactors/new-licensing/col/vogtle.html](http://www.nrc.gov/reactors/new-licensing/col/vogtle.html). Information on the AP1000 review is available on the site at <http://www.nrc.gov/reactors/new-licensing/design-cert/amended-ap1000.html>.

Callaway Site

On September 19, 2008, NRC staff made available to the public the COL application for a new reactor at the Callaway site near Fulton, Missouri. The applicant, AmerenUE, submitted the application and associated information on July 28, 2008. The application seeks approval to build and operate an Evolutionary Power Reactor (EPR) at the site, which is located approximately 10 miles southeast of Fulton. 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 Callaway application to determine whether it contains sufficient information required for a formal review. A decision is expected by early October. If the application is accepted, NRC will then announce an opportunity for the public to participate in an adjudicatory hearing on the application.

The application, minus proprietary or security-related details, is available on the NRC website at <http://www.nrc.gov/reactors/new-reactors/col/callaway.html>. Information on the EPR review is available on the site at <http://www.nrc.gov/reactors/new-reactors/design-cert/epr.html>.

Calvert Cliffs

On September 26, 2008, NRC announced the opportunity to participate in a hearing on a COL application for a new reactor at the Calvert Cliffs site near Lusby, Maryland. UniStar submitted the application in two parts—the safety analysis and related information on March 17, 2008, and the environmental report on July 13, 2007, along with supplemental information on December 14, 2007. The company is seeking a license to build and operate an EPR at the site, approximately 40 miles

south of Annapolis. (For additional information on the EPR, see above under “Callaway Site.”)

On January 25, 2008, NRC staff determined that the application contains sufficient information for the agency to formally “docket,” or file, the application and begin its technical review. The docket number established for this application is 52-016. NRC has published a notice of opportunity to intervene in the *Federal Register*, which expires on November 25, 2008. Petitions may be filed by anyone whose interest may be affected by the proposed license, who wishes to participate as a party in the proceeding, and who meets criteria set out in NRC regulations.

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

NRC Announces Hearing Opportunity re Yucca Mountain

On October 17, 2008, the U.S. Nuclear Regulatory Commission announced the opportunity to request a hearing on the U.S. Department of Energy’s application seeking authorization to construct a spent nuclear fuel and high-level radioactive waste repository at Yucca Mountain, Nevada. Previously, on September 8, the agency formally docketed the application and recommended that the Commission adopt, with further supplementation, DOE’s Environmental Impact Statement (EIS) for the repository project. (See related story, this issue.)

***Federal Register* Notice**

A notice of opportunity for a hearing was published in the *Federal Register* shortly after the October 17 announcement. Petitions to intervene and requests for hearing must be submitted within 60 days of publication of the *Federal Register* notice to the

NRC’s Electronic Information Exchange (EIE) system. Petitions to intervene must be filed in accordance with NRC regulations governing electronic filing. Additional guidance and instructions regarding electronic submissions to the NRC EIE system are available on the NRC web site at <http://www.nrc.gov/site-help/e-submittals.html>.

PAPO Board Rulings

A Pre-Licensing Application Presiding Officer (PAPO) Board has issued rulings to prepare participants for the Yucca Mountain hearing. The Atomic Safety and Licensing Board Panel anticipate that several three-judge boards will be appointed to hear contentions on various subjects related to the application. Hearings are expected to be held at both NRC’s headquarters in Rockville, Maryland and the NRC’s Las Vegas Hearing Facility.

Background

DOE had submitted the application to NRC on June 3, 2008. The application, which is 8,600 pages long, details DOE’s plans “to safely isolate spent nuclear fuel and high-level radioactive waste in tunnels deep underground at Yucca Mountain, a remote ridge on federally controlled land in the Mojave Desert 90 miles northwest of Las Vegas.” The waste is currently being stored at 121 temporary locations in 39 states throughout the nation.

For additional information about NRC’s role in regulating the disposal of high-level nuclear waste, please go to <http://www.nrc.gov/waste/hlw-disposal.html>. For early access to the application and related documents, please go to the NRC’s Licensing Support Network at <http://lsnnet.gov/>.

Public Comment Sought re NRC Enforcement Policy

On September 15, 2008, the U.S. Nuclear Regulatory Commission announced that the agency is seeking public comment on a proposed major revision to its Enforcement Policy that will more appropriately address NRC-regulated activities and reflect current and future agency work.

The proposed revisions include fines related to the Yucca Mountain high-level waste repository and gas centrifuge enrichment facilities, as well as modified fines for uranium conversion facilities. It also adds discussion of enforcement issues associated with combined licenses for the proposed new reactors and the construction phase of proposed fuel facilities as well as recently publicized requirements in the safeguards and security area.

NRC's Enforcement Policy sets out guidance for potential penalties and actions in response to apparent violations of NRC requirements. It encourages prompt identification and comprehensive correction of violations.

The proposed Enforcement Policy revisions are available on NRC's web site at www.nrc.gov/reading-rm/adams.html under ADAMS accession number ML082520457. NRC welcomes public comments from interested parties including public interest groups, states, members of the public and the regulated industry on the proposed Policy for 60 days from publication of the Notice of Availability in the *Federal Register*.

Comments may be submitted by either accessing the Federal e-Rulemaking Portal at www.regulations.gov with docket identification number NRC-2008-0497, or by mailing comments to Michael T. Lesar, Chief, Rulemaking, Directives and Editing Branch, Mail Stop T6-D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

For additional information, please contact Doug Starkey of the Office of Enforcement at (301) 415-3456 or at DougStarkey@nrc.gov.

NRC Hosts Public Meeting re Use of Cesium-137 Chloride Sources

On September 29-30, 2008, the U.S. Nuclear Regulatory Commission hosted a public meeting at the agency's headquarters in Rockville, Maryland to solicit early public input on issues associated with the use of radioactive cesium chloride sources. The issue was raised, and concern expressed, by an LLW Forum member during NRC Commissioner Jaczko's presentation at the fall 2008 LLW Forum meeting in Annapolis, Maryland.

NRC's meeting included five roundtable sessions on the topics of:

- ♦ alternative cesium chloride sources;
- ♦ alternative technologies;
- ♦ phase out and transportation issues;
- ♦ additional enhanced security; and,
- ♦ potential future requirements for use of the material.

The workshop concentrated on the use of cesium chloride sources identified by the International Atomic Energy Agency as Category 1 and 2 sources, which may pose a significant risk to public health and the environment if not properly handled and secured. The National Academy of Sciences recently recommended the replacement or elimination of certain cesium chloride sources to lower the potential for theft or misuse.

*The meeting notice can be accessed at <http://www.nrc.gov/public-involve/public-meetings/index.cfm>. Additional information is available in the *Federal Register* at http://edocket.access.gpo.gov/2008/pdf/E*-17545.pdf.*

Public Meeting Held re National Enrichment Facility

On October 2, 2008, U.S. Nuclear Regulatory Commission staff held a public meeting with officials of Louisiana Energy Services (LES) in Eunice, New Mexico, to discuss the company's performance in the construction of the National Enrichment Facility. The meeting was open to the public and NRC officials were available to answer questions from interested observers.

The purpose of the meeting was to discuss the results of the NRC's Assessment of Licensee Performance, which covers the period beginning with the issuance of the license to construct and operate the plant on June 23, 2006 through June 30, 2008.

Discussion at the meeting included management measures, facility construction and facility support. In its report, NRC staff concluded that LES conducted its activities safely and in accordance with the license requirements. NRC's review did not identify a need for any improvement in those three areas, though it did identify a technical violation in the area of configuration management.

Once completed, the gas centrifuge uranium enrichment plant will process fuel for nuclear power plants.

NRC Hosts Public Meeting re San Onofre

On September 23, 2008, U.S. Nuclear Regulatory Commission staff met with officials from Southern California Edison Company (SEC) to discuss the status of performance improvements and other issues at the San Onofre Nuclear Generation Station. SEC operates the plant, which is located near San Clemente, California. The meeting was open to public observation and the public was given an opportunity to ask questions.

During the course of the meeting, SEC officials briefed NRC staff on actions taken to address deficiencies in the areas of human performance, and problem identification and resolution. SEC also discussed the status of actions taken in response to a Confirmatory Order issued by NRC last January in response to willful violations of NRC regulations.

For additional information, please contact Don Allen at (817) 276-6574 or at Don.Allen@nrc.gov.

Monitoring Plan Put in Effect Prior to Approach of Hurricane Ike

On September 12, 2008, the U.S. Nuclear Regulatory Commission announced that it had activated its Incident Response Center in Arlington, Texas and was monitoring the approach of Hurricane Ike. The agency dispatched four inspectors to the South Texas Project nuclear power plant, which has two pressurized water reactors, and is located 12 miles from Bay City, Texas. Officials at agency headquarters in Rockville, Maryland also closely monitored the course of the hurricane.

The South Texas Project plant notified NRC of its plans to shut down if hurricane winds in excess of 73 mph were forecast at the site. In such case, the licensee would declare an Unusual Event—the lowest of the agency's four emergency classifications.

The South Texas Project, like all nuclear power plants, has emergency diesel generators available in the event of a loss of off-site power and has been designed to withstand hurricane force winds, as well as other natural disasters like tornadoes, earthquakes and storm surges.

NRC requires that a plant be shut down two hours prior to the arrival of hurricane force winds and that an Alert is declared in the event of any structural damage to safety-related buildings on site.

Obtaining Publications

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). listserv@unixmail.rtpnc.epa.gov
- EPA • (for program information, publications, laws and regulations) www.epa.gov
- U.S. Government Printing Office (GPO) (for the Congressional Record, *Federal Register*, congressional bills and other documents, and access to more than 70 government databases). www.access.gpo.gov
- GAO homepage (access to reports and testimony) www.gao.gov

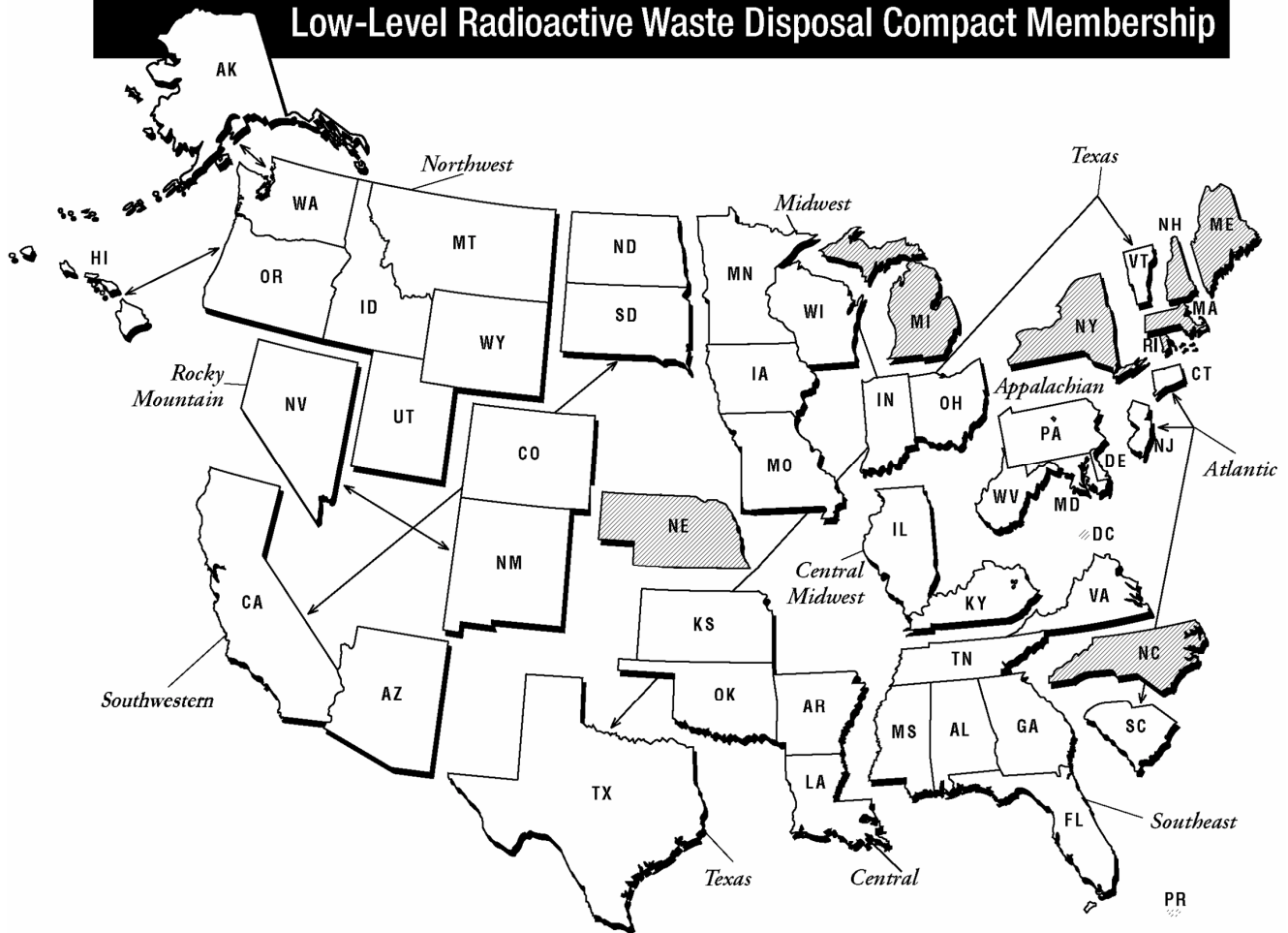
To access a variety of documents through numerous links, visit the web site for the LLW Forum, Inc. at www.llwforum.org

Accessing LLW Forum, Inc. Documents on the Web

LLW Notes, LLW Forum *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.

Low-Level Radioactive Waste Disposal Compact Membership



Appalachian Compact

Delaware
Maryland
Pennsylvania
West Virginia

Atlantic Compact

Connecticut
New Jersey
South Carolina

Central Compact

Arkansas
Kansas
Louisiana
Oklahoma

Central Midwest Compact

Illinois
Kentucky

Northwest Compact

Alaska
Hawaii
Idaho
Montana
Oregon
Utah
Washington
Wyoming

Midwest Compact

Indiana
Iowa
Minnesota
Missouri
Ohio
Wisconsin

Rocky Mountain Compact

Colorado
Nevada
New Mexico

Northwest accepts Rocky Mountain waste as agreed between compacts

Southeast Compact

Alabama
Florida
Georgia
Mississippi
Tennessee
Virginia

Southwestern Compact

Arizona
California
North Dakota
South Dakota

Texas Compact

Texas
Vermont

Unaffiliated States

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