

LLWnotes

Volume 24, Number 1 January/February 2009

Texas Compact/State of Texas

TCEQ Approves Order Granting WCS' LLRW Application

On January 14, 2009, Commissioners from the Texas Commission on Environmental Quality (TCEQ) approved an order granting the application of Waste Control Specialists LLC (WCS) for Radioactive Material License No. R04100. The license will be issued after condemnation proceedings are completed and the applicant has acquired the mineral rights on the underlying land at which the site will be located. The Commissioners approved the licensing order by a vote of 2 to 0.

The license allows WCS to operate two separate facilities for the disposal of Class A, B and C low-level radioactive waste—one being for the Texas Low-Level Radioactive Waste Disposal Compact, which is comprised of the States of Texas and Vermont, and the other being for federal waste as defined under the Low-Level Radioactive Waste Policy Act of 1980 and its 1985 amendments.

The WCS facility is currently authorized for the processing, storage and disposal of a broad range of hazardous, toxic, and certain types of radioactive waste. WCS is a subsidiary of Valhi, Inc.

The Meeting

The January 14 meeting, which was open to the public, began at 9:30 a.m. During the course of the meeting, TCEQ Commissioners considered

requests for hearing and related responses and replies, the environmental analysis, the licensing order and draft license, public comments, and the Executive Director's Response to Public Comments.

State Senator Kel Seliger, State Representative Tryon Lewis, and Andrews County Judge Richard Dolgener addressed the Commissioners in support of issuing the license. Nobody spoke in opposition to its issuance.

During the course of the meeting, the Commissioners determined to deny written hearing requests on the license application that had been previously filed. However, the petitioners will have an opportunity to appeal the denial of their hearing requests. (See the below section titled, "Next Steps.")

(Continued on page 9)

In This Issue

Texas LLRW Compact Commission to Hold First Meeting—page 8

WCS Receives Hazardous Waste Permit for Federal Waste Facility
—page 11

RIS Issued re Interim LLRW Storage at Reactor Sites—page 19

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

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

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Low-Level Radioactive Waste Forum, Inc.

LLW Notes

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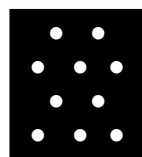
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Table of Contents

States and Compacts (Cover Story)	1
TCEQ Approves Order Granting WCS' LLRW Application.....	1
Low-Level Radioactive Waste Forum, Inc	4
Register Now: Spring 2009 LLW Forum Meeting	4
Low-Level Radioactive Waste Forum Meetings- 2009 and Beyond	4
LES Becomes Newest LLW Forum Member	5
States and Compacts (continued)	6
American Ecology Appoints James Baumgardner as President & COO	6
American Ecology Extends Stock Repurchase Program.....	6
EnergySolutions Denied Tax Waste Deductions	7
Impact and Babcock Sign Teaming Agreement.....	8
Texas LLRW Compact Commission to Hold First Meeting.....	8
WCS Receives Hazardous Waste Permit for Federal Waste Facility.....	11
Texas Stakeholder Meeting for Phase 2 Rulemaking.....	11
Courts	13
Studs vik Processing Facility LLC v. South Carolina Budget and Control Board and Chem-Nuclear Systems LLC.....	13
Statement from the South Carolina Budget and Control Board.....	16
Congress	17
Legislation Reintroduced re Foreign Waste Imports.....	17
Federal Agencies and Committees	18
ACRS Elects Leadership.....	18
Boards Created to Hear Yucca Mountain Contentions.....	18
RIS Issued re Interim LLRW Storage at Reactor Sites.....	19
National Source Tracking System Deployed	21
NRC Makes Recommendation re Cesium Chloride Radiation Sources.....	22
Organizations Requested to Report re Tritium Exit Signs	22
USEC Gaseous Diffusion Plants Recertified	23
NRC Meets with USEC Plant Officials	24
License Renewals Continue to Move Forward	24
Combined License Application Reviews Continue.....	28
Final Rule Approved re Plant Security	31
Workshop Held re Safety and Security Culture Policy Statement.....	32
Registration Open for NRC's 21st Annual Regulatory Conference	33
NRC Issues Performance and Accountability Report Summary	33
NRC Receives High Scores in Human Capital Survey.....	34
Obtaining Publications	35

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.

Register Now: Spring 2009 LLW Forum Meeting Columbia, South Carolina

Registration for the spring 2009 meeting of the Low-Level Radioactive Waste Forum is ongoing and space is limited. 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. Regional utility generators are hosting a complimentary dinner event for all meeting attendees on Monday evening. In addition, the Atlantic Compact will hold its regular meeting—which is open to members of the public except for the Executive Session—during the lunch break on Monday afternoon.

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>.

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

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.

LES Becomes Newest LLW Forum Member

The Low-Level Radioactive Waste Forum, Inc. (LLW Forum) is pleased to announce that it has received and accepted a new member application from Louisiana Energy Services (LES) for 2009. Clint Williamson, who serves as Vice President for Governmental Affairs at LES, will serve as the company's designated liaison to the LLW Forum.

Louisiana Energy Services

LES, which is a wholly owned subsidiary of Urenco, is seeking to construct and operate a gas centrifuge uranium enrichment plant in Eunice, New Mexico. The facility, which would be Urenco's fourth enrichment plant, will be known as the National Enrichment Facility. On June 23, 2006, LES made history when it received the first Combined Construction and Operating License ever issued by the U.S. Nuclear Regulatory Commission for the

proposed enrichment facility in Lea County. Once constructed and operating at full capacity, LES anticipates that the plant will produce sufficient enriched uranium for nuclear fuel to provide approximately five percent of America's electricity needs.

In addition to LES, Areva Idaho, GE-Hitachi Global Laser Enrichment, and the U.S. Enrichment Corporation have all announced plans to construct and operate uranium enrichment plants.

LLW Forum

The LLW Forum was originally established to facilitate state and compact implementation of the Low-Level Radioactive Waste Policy Act and its 1985 Amendments and to promote the development of safe and cost-efficient waste management opportunities for low-level radioactive waste generators. In 2000, the organization incorporated into a non-profit entity and expanded its membership to include all interested stakeholders. Today, the LLW Forum counts among its members and subscribers five federal agencies; nine low-level radioactive waste compacts; twelve current or designated host states; five operating waste disposal facility operators; as well as various utilities, brokers/processors, associations and other interested stakeholders.

The next meeting of the LLW Forum will be held in Columbia, South Carolina on March 23-24, 2009. The meeting, which is being sponsored by the Atlantic Interstate Low-Level Radioactive Waste Compact and the State of South Carolina, will include a session on planned enrichment facilities and NRC's recently issued paper on the proper classification of large quantities of depleted uranium. (See *LLW Notes*, November/December 2008, pp. 1, 27-30.)

For additional information on the LLW Forum or to register for the upcoming meeting, please go to www.LLWForum.org or contact Todd D. Lovinger, the organization's Executive Director, at (202) 265-7990.

Northwest Compact/State of Idaho

American Ecology Appoints James Baumgardner as President & COO

On December 11, 2008, American Ecology Corporation announced that its board of directors has appointed James Baumgardner to the newly created position of President and Chief Operating Officer. Baumgardner, who began his new position on January 5, 2009, is rejoining American Ecology after previously serving as Senior Vice President and Chief Financial Officer from 1999 to 2006. According to the press release announcing his appointment, Baumgardner “played a central role in the successful acquisition of the Company’s Grand View, Idaho facility in early 2001.”

As a member of American Ecology’s senior management team, Baumgardner will report directly to Stephen Romano, the company’s Chairman and Chief Executive Officer. He will be responsible for sales and marketing, as well as disposal site operations. He will also help plan and execute strategic initiatives including, but not limited to, the identification, acquisition, and integration of businesses to fuel future growth.

“We are delighted to have Jim Baumgardner return to American Ecology,” commented Romano. “Jim brings an impressive combination of financial, strategic, and business operations expertise to the Company. This, combined with his demonstrated capital markets and acquisition experience, makes him well suited to this new role within the Company. He is also uniquely prepared to hit the ground running, having worked with American Ecology’s management team, customers and investors in the past.”

From 2006 to 2008, Baumgardner served as Senior Vice President and Chief Financial Officer to SECOR International, Inc.—a provider of environmental consulting services based in

Redmond, Washington. He has also previously held various positions in corporate banking and corporate treasury. He holds both Masters of Business Administration and Bachelor of Science degrees from Oregon State University.

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

American Ecology Extends Stock Repurchase Program *Declares Quarterly Dividend*

On December 12, 2008, American Ecology Corporation announced that its Board of Directors has extended a previously announced stock repurchase program from December 31, 2008 to February 28, 2009, unless otherwise extended, canceled or modified. The Board initially authorized the company to repurchase up to 600,000 shares, or about 3%, of its outstanding common stock on October 28, 2008. (See *LLW Notes*, November/December 2008, p. 5.)

In addition, American Ecology announced that it has entered into a prearranged stock repurchase plan under Rule 10b5-1 of the Securities Exchange Act of 1934 (“the 10b5-1 Plan”) to facilitate the repurchase program. Under the 10b5-1 Plan, a third party broker will have authority to repurchase the company’s shares in the open market or through privately negotiated transactions in accordance with the terms of the plan. The 10b5-1 Plan will permit repurchases from January 12, 2009 through February 28, 2009, unless the plan is terminated earlier in accordance with its terms. American Ecology anticipates funding all repurchases with cash. As of September 30, 2008,

States and Compacts *continued*

American Ecology had 18.3 million shares outstanding and \$19.2 million in cash.

Subsequently, on January 5, 2009, American Ecology declared that stockholders of record on January 16, 2009 would receive a quarterly cash dividend of 18 cents per common share, which monies were paid on January 23, 2009. American Ecology estimated that approximately \$3.3 million in cash would be paid out for the declared quarterly dividend.

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

EnergySolutions Denied Tax Waste Deductions

On January 16, 2009, the Utah Supreme Court issued a ruling denying two tax deductions being sought by EnergySolutions. The deductions involve 2001 tax filings by the company, which at that time was under different ownership and operated under the name Envirocare.

In the ruling, the five justices agreed with a lower court decision clarifying the radioactive waste disposal company's 2001 tax obligations. In that decision, Third District Court Judge John Paul Kennedy held that the company was obligated under the law to pay tax on the millions of dollars of "mitigation fees" it pays to Tooele County pursuant to a contract between the parties. Kennedy also ruled that the company could not

deduct taxes that generators pay to send waste to the site.

EnergySolutions challenged the lower courts ruling, saying it essentially resulted in a "tax upon the tax." The Utah Supreme Court disagreed, however, finding that both fees were part of the company's cost of doing business.

"The Radioactive Waste Tax Act and its amended version, the Radioactive Waste Facility Tax Act, are unambiguous in requiring the inclusion of all payments received by Envirocare for the receipt and disposal of radioactive waste in its gross receipts for tax purposes," wrote Chief Justice Christine Durham. "The statute does not permit Envirocare to deduct from its gross receipts amounts it bills customers for use in either paying its Waste Tax or in meeting its contractual obligations to Tooele County."

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.

Southeast Compact/State of Tennessee

Impact and Babcock Sign Teaming Agreement

On February 2, 2009, a teaming agreement was announced between Impact Services, Babcock Services and IceSolv (a wholly owned subsidiary of Babcock) for the provision of expanded decontamination services at Impact's radioactive waste processing facility in Oak Ridge, Tennessee.

"This teaming agreement will allow Impact Services and Babcock Services to provide customers with yet another process geared toward reducing the volume of radioactive waste that must be sent for disposal," said Greg Broda, Vice President of Operations at Impact. "The cost savings that this approach will allow our customers to achieve is quite significant."

"In addition to the on-site services that we provide to our customers, we can now offer our customers with the option of shipping contaminated lead, tools, motors, containers, equipment and other components to a fixed base facility for decontamination," said Phil Gallagher, Vice President at Babcock. "Decontamination items can then be free released, recycled, or returned to customers for further use."

Impact, a small business enterprise, operates a radioactive waste processing facility in Tennessee for both federal and commercial clients. The company performs a variety of processing services geared toward the volume reduction of radioactive wastes including decontamination, waste stream inspection and characterization services, waste sorting and segregation, and thermal processing.

Babcock is a specialty remediation company specializing in project decontamination support that often requires engineering capabilities. Babcock performs on-site waste volume minimization, tool and component decontamination, and size reduction along with customized decontamination projects.

For additional information, please contact Impact at (865) 576-8708 or at www.impactservicesinc.com.

Texas Compact

Texas LLRW Compact Commission to Hold First Meeting

The Texas Low-Level Radioactive Waste Compact Commission held its first meeting on Friday, February 13, at 2:00 p.m. CST. According to the meeting announcement, "The Commission has never met before and, accordingly, has not yet established a 'location where meetings of the governmental body are usually held.'" Nonetheless, this initial meeting was held in Room 201S, Building E, of the Texas Commission on Environmental Quality (TCEQ), 12100 Park 35 Circle, Austin, Texas 78753. The meeting was accessible to the public via telephone conference and was tape-recorded.

A Notice of Meeting was posted with the Secretary of the State of Texas. A majority of the Commissioners appeared via teleconference due to logistical and budgetary issues. In particular, the Commission currently has no budget for travel reimbursements.

In terms of agenda and discussion items, the meeting notice states as follows:

"At the meeting, the Commission will consider and possibly vote on the adoption of an Interagency Cooperation Contract with the Texas Commission on Environmental Quality, receive without discussion suggestions from individual board members and the public for potential items to be placed on a future in-person meeting agenda, and set a date for its first in-person meeting."

Due to the nature of the issues to be discussed, the meeting was relatively brief.

Compact Commission

On November 25, 2008, Texas Governor Rick Perry (R) announced appointments to the Commission. (See *LLW Notes*, November /

States and Compacts *continued*

December 2008, p. 9.) The 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.

License Application Status

On January 14, 2009, TCEQ Commissioners approved an order granting the application of Waste Control Specialists LLC (WCS) for Radioactive Material License No. R04100. (See related story, this issue.) The license will be issued after condemnation proceedings are completed and the applicant has acquired the mineral rights on the underlying land at which the site will be located. The Commissioners approved the licensing order by a vote of 2 to 0.

The license allows WCS to operate two separate facilities for the disposal of Class A, B and C low-level radioactive waste—one being for the Texas Low-Level Radioactive Waste Disposal Compact, which is comprised of the States of Texas and Vermont, and the other being for federal waste as defined under the Low-Level Radioactive Waste Policy Act of 1980 and its 1985 amendments.

The WCS facility is currently authorized for the processing, storage and disposal of a broad range of hazardous, toxic, and certain types of radioactive waste. WCS is a subsidiary of Valhi, Inc.

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.

(Continued from page 1)

By approving the order granting the license application, the Commissioners accepted a request from the applicant for an exemption from a Commission rule requirement requiring that the state or federal government own the land on which low-level radioactive waste is disposed for the proposed federal waste disposal facility. NRC recently discussed compatibility requirements and other factors for consideration regarding the proposed land exemption request, by letter dated October 28, 2008. (See *LLW Notes*, November/December 2008, pp. 10-12.)

An archived copy of the meeting is available for viewing at <HTTP://WWW.TEXASADMIN.COM/cgi-bin/tnrcc.cgi>.

Next Steps

The Commission will issue a written order reflecting the January 14 decision that will be dated and signed by the Chairman. Once that order is issued, a motion for rehearing may be filed within 30 days by parties to the Commission requesting that the Commission reconsider the matter. If such a motion is filed, the Commissioners have 30 days to respond or the motion will expire by law.

After a motion for rehearing is either acted upon or expires, a party may then file a petition to review, set aside, modify or suspend the act of the Commission by filing a petition in a district court of Travis County, Texas.

After condemnation proceedings are completed and the applicant has acquired remaining mineral rights, the license can be issued. There is a pre-construction section of the license that must be completed and submitted to the TCEQ prior to commencement of major construction of the facilities. Additionally, construction of the facilities may not commence until the pre-construction requirements have been fulfilled and the TCEQ Executive Director has granted written approval. Among several other requirements on waste acceptance, WCS must provide an acceptable agreement signed

States and Compacts *continued*

by the Secretary of the U.S. Department of Energy prior to accepting federal facility waste.

For additional information, please contact Susan Jablonski of TCEQ at sjablons@tceq.state.tx.us or at (512) 239-6466 or Rickey Dailey of WCS at (512) 708-8655.

Background

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 application seeks authorization for the construction and operation of two separate facilities for the disposal of compact waste and federal waste.

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. (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.

On November 19, 2008, 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 *LLW Notes*, September / October 2008, pp. 10-11.)

On December 2, 2008, TCEQ's Executive Director filed a Response to Public Comments and a Proposed Revised Draft License related to WCS license application. (See *LLW Notes*, November / December 2008, pp. 8-9.)

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.

WCS Statement

In a press release issued shortly after the meeting, William Lindquist, Chief Executive Officer of WCS, stated as follows:

WCS and the citizens of Andrews and Lea counties and the Permian Basin have been waiting for this day for many years. The state of Texas will now be able to meet its obligations to the power plants, hospitals, universities, research institutes and other industrial generators in the Texas Compact to permanently dispose of their low-level radioactive waste.

This final license combined with the recently issued byproduct material disposal license and our existing permits and licenses gives WCS the broadest range of capabilities of any commercial enterprise in the United States for the storage, treatment and permanent disposal of hazardous, toxic, low-level and mixed low-level radioactive waste and radioactive byproduct material. The only U.S. commercial facility currently authorized to accept low-level and mixed LLRW is limited to disposing of Class A waste, while WCS will be able to permanently dispose of Class A, B and C low-level radioactive waste.

With today's vote, TCEQ commissioners made their vision for a better Texas a reality. The TCEQ recognized the implications this license held for Texas families and acted accordingly. WCS is grateful that the TCEQ has entrusted us with the responsibility to dispose of waste resulting from activities that affect all our lives every day in a manner that will protect human health and the environment for thousands of years to come.

States and Compacts *continued*

With the support of the Andrews County and Lea County communities and the Permian Basin, WCS is proud to offer a resolution.

Rodney Baltzer, President of WCS, noted that the license would require the hiring of approximately 75 new employees at the company's Andrews County facility. He went on to state as follows:

WCS has 10 years of experience disposing of hazardous and toxic waste and treating and storing low-level radioactive waste at its current site, and it will have at least a year's experience disposing of radioactive byproduct material by the time the low-level disposal operations begin.

WCS personnel are highly experienced in the safe, permanent disposal of toxic and hazardous waste and will soon begin disposing of byproduct material according to stringent state and federal guidelines and oversight. They are also highly experienced in the safe handling of waste similar to that which [we] will be taking for disposal under this new license. We are eager to apply our expertise to low-level radioactive waste disposal.

WCS Receives Hazardous Waste Permit for Federal Waste Facility

On January 7, 2009, Waste Control Specialists, LLC issued a press release announcing that the company has received notice that the Executive Director of the Texas Commission on Environmental Quality (TCEQ) has issued a permit for the disposal of hazardous waste for the proposed federal waste facility to be located at the company's site in Andrews County, Texas.

"This is another step forward for our company," stated Rodney Baltzer, President of WCS. "The combination of the hazardous waste permit and the proposed low-level radioactive waste ('LLRW') disposal license will allow WCS to safely dispose of a wide range of hazardous and radioactive wastes in the federal waste facility."

For background information and other recent licensing activities, please see related story, this issue.

For additional information, please contact Susan Jablonski of TCEQ at sjablons@tceq.state.tx.us or at (512) 239-6466 or Rickey Dailey of WCS at (512) 708-8655.

Texas Stakeholder Meeting for Phase 2 Rulemaking

In late January 2009, the Texas Commission on Environmental Quality (TCEQ) announced that the Phase 2 Rulemaking package for implementation of SB 1604 and HB 3838, 80th Legislative Session, and HB 1567, 78th Legislative Session, had been continued and would be held on the February 11, 2009 agenda.

A stakeholder meeting was held on Wednesday, February 4, 2009 at 9:00 a.m. at the TCEQ Central Office, 12100 Park 35 Circle, Austin, Texas in Building E, Room 201S. During that meeting, TCEQ staff accepted input on the following items:

- ♦ financial assurance for in-situ mining;
- ♦ providing financial assurance for aquifer restoration as part of the application process;
- ♦ independent third-party expert;
- ♦ clarification of statistical hypothesis test;
- ♦ period of stability sampling following mining;

States and Compacts *continued*

- ♦ notice provided to mineral owners for Class III wells;
- ♦ use of term "most expensive" for cost estimates related to in-situ uranium mining;
- ♦ establishment of fees to support the Texas Compact Commission;
- ♦ amendments for receipt of additional low-level radioactive waste;
- ♦ surcharges on curies as a measure of relative hazard into the disposal site;
- ♦ definition of invested capital; and,
- ♦ rate case expenses.

Implementation History

Throughout 2008, TCEQ hosted five stakeholder meetings and a hearing 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.)

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 2008. Minutes from the hearings can be found on the TCEQ's web site.

On October 1, 2008, TCEQ hosted a roundtable discussion for stakeholders 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. (See *LLW Notes*, September/October 2008, pp. 9-10.)

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

Background

SB 1604 SB 1604 concerns the transfer of certain regulatory responsibilities for radioactive waste management licensing from the Texas Department of State Health Services (DSHS) to the TCEQ. (See *LLW Notes*, May/June 2007, pp. 9-10.) Prior to its enactment, TCEQ had jurisdiction to regulate and license the disposal of radioactive substances except for by-product material. SB 1604, however, provides that TCEQ will also have jurisdiction to regulate and license: the processing or storage of low-level radioactive waste or naturally occurring radioactive material (NORM) waste received from other persons, except oil and gas NORM; the recovery or processing of source material; the processing of by-product material; and, sites for the disposal of radioactive waste, by-product material or NORM waste.

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

HB 3838 HB 3838 relates to the regulation of injection wells used for in situ uranium mining by the TCEQ. The legislation expands the TCEQ's jurisdiction to include wells used in the development of information that TCEQ requires for area permit applications. It clarifies that TCEQ has exclusive jurisdiction over wells used to provide geologic, hydrologic and water quality information in support of the development of mining permit

(Continued on page 15)

Studsvik Processing Facility LLC v. South Carolina Budget and Control Board and Chem-Nuclear Systems LLC

Suit and Counterclaim Filed re Barnwell Disposal Fees

On November 10, 2008, Studsvik Processing Facility LLC (“Studsvik”) filed a lawsuit against the South Carolina Budget and Control Board (“the Board”) and Chem-Nuclear Systems LLC (“Chem-Nuclear”). The action was filed in the Court of Common Pleas, Fifth Judicial Circuit, State of South Carolina.

In its complaint, Studsvik alleges, among other things, that the defendants breached an agreement between the parties for the importation of waste to the Barnwell disposal facility by providing a lower disposal rate to Studsvik’s competitors. Studsvik is seeking declaratory relief and damages in excess of \$13 million.

In its response, the Board denies that it breached the agreement and puts forth several affirmative defenses. In addition, the Board filed a counterclaim seeking payment for outstanding invoices totaling approximately \$2.8 million.

Chem-Nuclear responded by filing a motion to dismiss the action as it pertains to Chem-Nuclear for lack of subject matter jurisdiction and for failure to state a cause of action. In particular, Chem-Nuclear alleges that it is not a party to the agreement and that no relief is sought by Studsvik against Chem-Nuclear.

Background

Beginning in 2005, Studsvik and the Board entered into an agreement authorizing the importation of low-level radioactive waste into the Atlantic Compact region for disposal at the Barnwell facility,

as well as subsequent amendments thereto. The agreement established a disposal rate for waste shipped by Studsvik to the site. During fiscal years 2006 through 2008, Studsvik shipped waste to Barnwell pursuant to the terms of the agreement and the waste was accepted and disposed at the site.

Studsvik’s Complaint

Studsvik alleges that the importation agreement included reciprocal guarantees by the parties. Specifically, Studsvik asserts that it guaranteed to pay to the Board certain minimum cumulative payments each year for the disposal of certain classes of waste at the Barnwell site and, in exchange, the Board guaranteed that it would give Studsvik the most favorable disposal rate and allow Studsvik to match any lower rates that the state provided to Studsvik’s customers and competitors. Studsvik refers to the alleged agreement as the “best rate guarantee.”

The best rate guarantee, according to Studsvik, placed an affirmative obligation on the Board to promptly notify Studsvik of any such lower rates provided to other customers. In addition, Studsvik contends that the guarantee included a measure of damages for its violation that obligates the Board to apply, at Studsvik’s election, any such lower rates retroactively and prospectively for the entire fiscal year.

Studsvik alleges that, toward the end of fiscal year 2008, the company began to question whether the Board had violated the best rate guarantee by providing lower disposal rates to Studsvik’s customers and competitors during the term of the importation agreement. Accordingly, on July 8, 2008, Studsvik requested that the Board provide all pricing, contract and disposal records necessary to verify compliance. Although Studsvik alleges that all of the requested documents have not been tendered to date, it claims that an analysis of those documents that have been turned over establishes that the Board violated the best rate guarantee on multiple occasions during fiscal years 2006 through 2008. Studsvik further contends that it was impossible for it to elect to apply such lower rates

retroactively and prospectively because the Board failed to notify Studsvik at the time that the lower rates were allegedly charged. Recently, Studsvik demanded that the Board apply the lower rates for the relevant fiscal year. After the Board refused this request, Studsvik initiated legal action.

Studsvik's lawsuit alleges that the Board breached both the importation agreement and the best rate guarantee by failing to notify the company of lower rates billed to other customers and by failing to bill Studsvik at a comparably lower rate. As a result, Studsvik is seeking a declaratory judgment defining the rights, privileges and duties of and between the parties, as well as both actual and special monetary damages.

As its first cause of action, Studsvik claims that such breach has resulted in damages to the company in an amount equal to the difference between the disposal fees actually paid by Studsvik and the total disposal fees that would have been paid if the lowest rate per cubic foot paid by other customers in fiscal years 2006 through 2008 were applied retroactively and prospectively. Studsvik preliminarily calculates these damages to be approximately \$13 million. In addition, Studsvik is seeking special damages, including other economic damages, from the alleged breach. The amount of the special damages being sought is not specified in Studsvik's pleadings.

As its second cause of action, Studsvik disputes the validity of a demand for payment by Chem-Nuclear for monies alleged to be due and owing for waste that was previously disposed at the Barnwell site pursuant to the importation agreement. Specifically, Studsvik contends that it is not legally obligated to pay the outstanding monies due to the alleged breach of the importation agreement and Studsvik's claim for the return of monies based on the best rate guarantee.

The Board's Answer and Counterclaim

In its answer to the complaint, the Board disputes Studsvik's recitation of the alleged facts, offers several affirmative defenses and submits a

counterclaim for outstanding billings and alleged monies due and owing.

In particular, the Board denies that the importation agreement contains a "best rate guarantee" and contends that no such term appears anywhere in the contract. The Board acknowledges that it never notified Studsvik of any occurrences that would entitle the company to a lower disposal rate nor did it offer the company a lower disposal rate. However, the Board alleges that no occurrences happened for the same kinds of waste which would entitle Studsvik to a lower disposal rate.

Although the Board acknowledges that Studsvik requested in 2008 that lower disposal rates be applied retroactively and prospectively, the Board argues that it refused the demand as "unfounded." In this regard, the Board specifically denies Studsvik's allegation that "lower disposal rates [were] provided to other customers."

The Board further admits that Studsvik has disputed certain billings, but notes that the company did not do so until after expiration of the term of the importation agreement. The Board contends that the disputes raised by Studsvik are in no way meritorious.

The Board's answer contains various affirmative defenses including that Studsvik's claims fail to state a cause of action and are barred by the doctrine of laches and by applicable statutes of limitation. Even if Studsvik's claims for any given year were meritorious, which the Board denies, the Board alleges that Studsvik did not timely elect to have the allegedly lower rates applied. The Board further contends that Studsvik has waived, and/or is estopped from asserting, some or all of its claims. And, finally, the Board argues that Studsvik's interpretation of the importation agreement violates public policy in that its application would result in unconscionably low payments for the types and quantities of material shipped for disposal.

In its counterclaim, the Board alleges that Studsvik has failed to make payments on invoices for the disposal of 17 shipments of waste that were

disposed at the Barnwell site on or after April 24, 2008. The Board contends that Studsvik was charged the appropriate rates under the importation agreement and is seeking approximately \$2.8 million in damages, plus interest.

For additional information, please see the statement from the South Carolina Budget and Control Board in the box at the end of this story.

Chem-Nuclear's Motion to Dismiss

Chem-Nuclear has moved to dismiss the action as it pertains to the company for lack of subject matter jurisdiction and failure to state a cause of action. As grounds for the motion, Chem-Nuclear asserts that it is not a party to the contract at issue and that Studsvik is not seeking any relief against Chem-Nuclear. In addition, Chem-Nuclear further notes that the Board has exclusive authority to set disposal rates and that Chem-Nuclear billed Studsvik in accordance with the terms of the importation agreement. Chem-Nuclear specifically points out that the outcome of this action will not impact the amount of Chem-Nuclear's reimbursement for operating the Barnwell facility.

Chem-Nuclear's pleading contains various affirmative defenses including that the complaint fails to state facts sufficient to constitute subject matter jurisdiction and/or a cause of action against Chem-Nuclear and should therefore be dismissed. Chem-Nuclear also asserts that the applicable statutes of limitation and the doctrine of laches bar some or all of Studsvik's claims.

For additional information, please contact Will Davidson, attorney for the South Carolina Budget and Control Board, at (803) 806-8222 or wdavidson@dml-law.com; Jack Harrison of Studsvik at (423) 735-6300 or jharrison@studsvik-inc.com; or Bill House of Chem-Nuclear at (803) 758-1809 or wbhouse@energysolutions.com.

(Continued from page 12)

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.

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.

Statement from the South Carolina Budget and Control Board

The South Carolina Budget and Control Board (“the Board”) provided the following statement to the LLW Forum as additional background information on the lawsuit:

Studsvik is a subsidiary of a Swedish company that provides radioactive waste services internationally. Studsvik owns and operates a radioactive waste processing facility in Tennessee. A number of U.S. nuclear power plants ship waste to Studsvik, which processes the waste and re-packages the radioactive residue for disposal at either Barnwell, South Carolina or at Clive, Utah.

Studsvik entered an Importation Agreement with the Board in 2005 covering disposal of radioactive waste at Barnwell, South Carolina between July 1, 2005, and June 30, 2008.

Throughout Fiscal Year 2008, Studsvik asked the Board to increase its volume allocation at Barnwell for the remainder of the contractual term ending June 30, 2008. Board staff worked with other customers to reduce their contractual allocations in order to grant Studsvik additional volume. The Board was able to free up 960 additional cubic feet of disposal space for Studsvik in late March and April of 2008. In accepting the additional allocation, Studsvik did not indicate that any kind of contract dispute existed between Studsvik and the State of South Carolina.

Between late April 2008 and June 30, 2008, Studsvik made 17 shipments of waste to Barnwell consisting of 9,700 curies and weighing 60 tons. Studsvik, however, refused to pay approximately \$2.7 million for the radioactive waste shipped to Barnwell between April 2008 and June 30, 2008.

Studsvik did not notify the Board of any contractual concerns until after all of its waste had been disposed at Barnwell and the Importation Agreement ended on June 30, 2008. In early July, Studsvik informed the site operator, Chem-Nuclear, that it was having a “contract dispute” with the Board and would not pay for the 17 shipments of radioactive waste it had already disposed at Barnwell until the dispute was resolved. This was the first time the State of South Carolina had any indication that Studsvik had a “dispute” regarding the Importation Agreement. To date, Studsvik has refused to pay the State of South Carolina for the 60 tons of radioactive waste that was disposed at Barnwell during the period from April 2008 and June 30, 2008.

After the Board notified Studsvik that litigation would be filed to compel payment, Studsvik filed its claim against the State. Therefore, the Board promptly filed its demand for payment in the form of a counterclaim to Studsvik's lawsuit. Through the lawsuit, the State of South Carolina is seeking to collect what is now, with interest added, approximately \$2.8 million in unpaid fees for the disposal of 17 shipments of radioactive waste.

U.S. Congress

Legislation Reintroduced re Foreign Waste Imports

Legislation has been reintroduced in the 111th Congress that proposes to strip the U.S. Nuclear Regulatory Commission of its jurisdiction to authorize the importation of low-level radioactive waste.

House and Senate Bills

Representative Bart Gordon (D-TN) introduced the House of Representatives version, H.R. 515, on January 14, 2009. Gordon is the Chairman of the House Science and Technology Committee and a Senior Member of the Committee on Energy and Commerce. The bill, which currently has 65 cosponsors, has been referred to both the Committee on Energy and Commerce and the Committee on Ways and Means.

Senator Alexander Lamar (R-TN) introduced the Senate version, S. 232, on January 14, 2009. Lamar chairs the Senate Republican Conference and serves on committees overseeing education, clean air, highways, science, appropriations and the Tennessee Valley Authority. The bill, which has no cosponsors at present, has been referred to the Senate Committee on Environment and Public Works.

The bills, as introduced, would prohibit the importation of nuclear waste unless the material originated in the United States. The President could grant specific exemption only if an application showed the importation would serve a national or international policy goal, such as a research purpose.

The complete text of the bills can be found at <http://thomas.loc.gov/cgi-bin/thomas> by looking up bill no. H.R. 515 and S. 232.

Prior Attempt

Similar legislation was introduced in the 110th Congress. Although hearings were held on that legislation, it did not receive a vote in either chamber of Congress.

On May 20, 2008, the Subcommittee on Energy and Air Quality of the House Energy and Commerce Committee sponsored a hearing on the importation of radioactive waste into the country. The hearing focused on last year's House version of the legislation, H.R. 5632, as well as on a proposal by EnergySolutions regarding the importation of waste from Italy.

There were two panels during the nearly two and one-half hour hearing. The first panel included Margaret Doane, Director of the Office of International Programs at the U.S. Nuclear Regulatory Commission, and Kent Bradford, Chairman of the Utah Radiation Control Board. The second panel included Steve Creamer, Chairman and Chief Executive Officer of EnergySolutions and Gene Aloise, Director of Natural Resources and the Environment at the Denver Field Office of the U.S. Government Accountability Office.

For a detailed summary of the hearing and last year's legislation, please see [LLW Notes](#), May/June 2008, pp. 20-24.

Advisory Committee on Reactor Safeguards (ACRS)

ACRS Elects Leadership

On January 12, 2009, the U.S. Nuclear Regulatory Commission announced that the Advisory Committee on Reactor Safeguards (ACRS) has elected Dr. Mario Bonaca as Chairman, Dr. Said Abdel-Khalik as Vice-Chairman, and Dr. J. Sam Armijo as Member-at-Large. The ACRS advises the Commission, independently from the NRC staff, on safety issues related to the licensing and operation of nuclear power plants.

Bonaca is a nuclear consultant with more than 30 years of experience in analysis, design and operational support of nuclear power plants. He has worked at Combustion Engineering, Babcock and Wilcox, and was director of nuclear engineering services at Northeast Utilities prior to his retirement. He has been a member of ACRS since 1999 and previously served as the board's Chairman. He received his doctorate in physics from the University of Florence, Italy.

Abdel-Khalik has over 30 years of experience in mechanical engineering, reactor engineering, and thermal hydraulics. He holds masters and doctorate degrees from the University of Wisconsin-Madison, where he served as a faculty member until 1987. He then joined the Georgia Institute of Technology.

Armijo is an Adjunct Professor of Materials Science and Engineering at the University of Nevada-Reno. He has over 30 years of nuclear power experience, and expertise in nuclear fuels, structural materials, water chemistry, and advanced nuclear power systems. Prior to his retirement in 1999, he worked for General Electric in various technical and general management positions. He holds a bachelors degree in metallurgical engineering from Texas Western College, masters from the University of Arizona, and a doctorate in materials science from Stanford University.

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.

U.S. Department of Energy

Boards Created to Hear Yucca Mountain Contentions

The Atomic and Safety Licensing Board Panel of the U.S. Nuclear Regulatory Commission has established three boards to consider admissibility of contentions in the adjudicatory hearing over the geologic high-level nuclear waste repository proposed for Yucca Mountain, Nevada. The U.S. Department of Energy submitted its application for the repository on June 3, 2008. (See *LLW Notes*, May/June 2008, pp. 35-36.) NRC staff docketed the application on September 8, 2008. A notice of opportunity to request a hearing was published in the *Federal Register* on October 22, 2008. Petitions were due in December 2008.

Each board consists of three judges—two with legal expertise and one with technical expertise. Combined, the boards will consider and rule upon the admissibility of approximately 320 proposed contentions filed by 12 petitioners. These boards will consider only the standing of the petitioners and the admissibility of the contentions. Additional boards will be established to rule on any contentions that are admitted for a hearing.

On January 16, 2008, the ASLB issued an order establishing procedures for the standing and admissibility phase of the hearing. Petitioners will file their pleadings, responses and replies with all three boards, which will then allocate the contentions for consideration. The boards expect to hold oral arguments on standing and admissibility sometime this spring at the NRC's Las Vegas Hearing Facility.

Petitioners include the States of Nevada and California, several Nevada counties, and Native American tribal groups. Two other Nevada counties also filed requests to participate as interested government bodies.

U.S. Nuclear Regulatory Commission

RIS Issued re Interim LLRW Storage at Reactor Sites

On December 30, 2008, the U.S. Nuclear Regulatory Commission issued a Regulatory Issue Summary (RIS 2008-32) “to clarify the current NRC staff position regarding the long-term, interim storage of low-level radioactive waste (LLRW) at facilities licensed under Title 10, Part 50, ‘Domestic Licensing of Production and Utilization Facilities,’ of the *Code of Federal Regulations* (10 CFR) and to provide an acknowledgement, with certain conditions, of the proposed NEI/EPRI Guidelines for Operating an Interim On-Site Low-Level Waste Storage Facility, Final Draft, April 2008.”

The RIS—which was sent to all holders of operating licenses for nuclear power reactors, including those that have permanently ceased operations, and for research and test reactors—is intended to consolidate relevant information on interim long-term storage of LLRW. Of particular note, it reiterates that Part 50 licensees do not have to obtain a separate Part 30 license for on-site storage of LLRW generated at that site, and therefore, the five-year limit on storing such LLRW on-site remains not applicable.

Background

Since 1981, NRC has issued a number of generic communications providing information for storing LLRW on licensees’ sites. The RIS seeks to consolidate relevant information and clarify these past positions. It does not require any action or written response on the part of the addressees.

The following is a brief summary of previously issued documents that specifically address interim storage of LLRW on reactor sites. (Persons interested in more detail are directed to the RIS or to the documents themselves.)

- ♦ *Generic Letter (GL) 81-38, “Storage of Low-Level Radioactive Wastes at Power Reactor Sites:”* Issued in November 1981 after three disposal sites permanently closed, GL 81-38 informed licensees that an evaluation under 10 CFR 50.59 must be done if on-site storage capacity was to be increased. An application for a license under 10 CFR Part 30 must then be submitted to NRC if the evaluation identifies an unreviewed safety question. The license would be issued for a five-year term and could be renewed for additional five-year terms if continued on-site storage was needed. GL 81-38 also provided guidance to be used in the design, construction and operation of a LLRW storage facility.
- ♦ *GL 85-14, “Commercial Storage at Power Reactor Sites of Low-Level Radioactive Waste Not Generated by the Utility:”* GL 85-14 stated that, as a matter of policy, NRC opposes any activity at a nuclear reactor site which is not generally supportive of activities authorized by the operating license or construction permit and which may divert attention from the primary task of safe operation or construction of the power reactor. Accordingly, GL 85-14 determined that interim storage of LLRW within the exclusion area of a reactor site is subject to NRC jurisdiction regardless of whether or not the reactor site is located in an Agreement State. It reiterated that a Part 30 license is required for LLRW storage and that an amendment to the 10 CFR Part 50 license may also be required.
- ♦ *Information Notice (IN) 89-13, “Alternative Waste Management Procedures in Case of Denial of Access to Low-Level Waste Disposal Sites:”* Issued in February 1989, IN 89-13 provided suggestions on ways to minimize possible adverse consequences of interim storage by minimizing the waste generated on-site. Suggested actions included evaluating potential safety problems and technical difficulties arising from long-term

Federal Agencies and Committees *continued*

storage, reviewing ways to minimize waste generation, and reviewing alternative waste management and disposal methods.

- ♦ *SECY 94-198, "Review of Existing Guidance Concerning the Extended Storage of Low-Level Radioactive Waste" (ML071640462):* SECY 94-198 consolidated previous staff guidance and clarified that Part 50 licensees no longer have to apply for a Part 30 license to store LLRW because they are already authorized, within the limits of their operating licenses, to possess and store LLRW on-site. The document stated that, in the event that the storage of LLRW exceeds limits in the operating license, the licensee should seek an amendment. The document also eliminated the five-year limit for on-site storage of LLRW generated at the site for power reactor licensees and clarified that a 10 CFR 50.59 evaluation is not required for LLRW storage in those instances where no changes in the facility or procedures as described in the safety analysis report are involved. Finally, the paper stated that containers for interim long-term LLRW storage should be compatible with the waste type and possible environmental factors to prevent corrosion and that LLRW should be stored in such a manner as to prevent potential gas generation from processes such as radiolysis, biodegradation, or chemical reaction.

On-Site Storage Considerations

The RIS states that the operation of an on-site LLRW storage facility must comply with requirements in 10 CFR Part 20, "Standards for Protection Against Radiation," including 10 CFR 20.1801, "Security of Stored Material," which requires that licensed materials stored in controlled or unrestricted areas be secured from unauthorized removal or access. In addition, Part 20 requires that licensees storing LLRW on reactor sites for an indefinite period of time must ensure that, in connection with such LLRW storage, occupational doses are as low as is reasonably achievable and that doses to individual members of the public are within regulatory limits. Also, LLRW storage must be accounted for in a licensee's Part 20 radiation protection programs, including meeting the

requirements for surveys and monitoring, labeling, and reports and record retention.

The RIS goes on to state that, when evaluating interim long-term on-site LLRW storage, Part 50 licensees must consider the applicability of the general design criteria listed in Appendix A to 10 CFR Part 50. Particular attention should be placed upon criteria requiring that fuel storage and handling, radioactive waste and other systems that may contain radioactivity shall be designed to assure adequate safety under normal and postulated accident conditions; that appropriate systems shall be provided in fuel storage, radioactive waste systems, and associated handling areas to detect conditions that may result in loss of residual heat removal capability and excessive radiation levels and to initiate appropriate safety actions; and, that there must be a method for monitoring the level of radioactivity in effluent release pathways and to the plant environs.

Finally, the RIS points out that Appendix 11.4-A, "Design Guidance for Temporary Storage of Low-Level Radioactive Waste," of the revised NUREG-0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants," provides specific guidance to licensees for increasing on-site LLRW storage capacity.

Proposed EPRI Guidelines

In May 2008, the Nuclear Energy Institute submitted to the NRC a draft report titled, "Guidelines for Operating an Interim On-Site Low-Level Radioactive Waste Storage Facility, Final Draft, April 2008." The report, which was prepared by the Electric Power Research Institute, is known as the Guidelines Report. It includes guidance for licensees on record keeping, waste containers and waste forms, monitoring and inspecting, and on combining Class B and C waste into greater than Class C (GTCC) waste for extended on-site storage for LLRW.

The RIS states that, with the exception of the section on combining Class B and C waste into GTCC, NRC staff finds the guidelines to be consistent with NRC information contained in the

RIS and other NRC guidance such as NUREG-0800. NRC believes that the Guidelines Report provides an acceptable method for record keeping, determining waste forms and waste containers, and monitoring and inspecting the interim long-term storage of LLRW. While NRC has indicated that volume reduction of LLRW is generally appropriate, the RIS notes that the agency has not developed a position on combining Class B and C waste together to form GTCC waste.

For additional information, please contact James Kennedy of NRC's Office of Federal & State Materials & Environmental Management Programs, Division of Waste Management & Environmental Protection, at (301) 415-6668 or at james.kennedy@nrc.gov.

National Source Tracking System Deployed

On January 5, the U.S. Nuclear Regulatory Commission announced the deployment of its National Source Tracking System (NSTS)—a centralized national registry that is intended to provide cradle-to-grave accounting of certain high-risk radioactive materials that are used in industry, medicine and research. According to the agency, the NSTS will strengthen efforts by NRC and other state and federal agencies to monitor the location, use and disposal of certain radiation sources that, if not properly controlled, could pose a safety and security risk to both the public and the environment. In addition, NRC believes that the NSTS will improve the ability of regulators to detect and act upon inventory discrepancies, respond to emergencies, and verify legitimate import, export, ownership and use of sources.

“The NRC is dedicated to protecting the public's health and safety and the common defense by enhancing the security of these most sensitive radioactive materials,” stated NRC Chairman Dale Klein. “The National Source Tracking System will enhance our ability to monitor transactions involving radioactive material and improve our knowledge of where they are being used.”

Congress mandated the NSTS in the Energy Policy Act of 2005. On November 8, 2006, NRC issued regulations implementing the system. Licensees are required to begin using the system by January 31 of this year. According to NRC, the NSTS harmonizes domestic requirements with internationally recognized guidance for the safety and security of radioactive material of concern, including the International Atomic Energy Agency's (IAEA's) Code of Conduct on the Safety and Security of Radioactive Sources.

The system will track radiation sources that fall into Category 1 and Category 2 of the IAEA's ranking of radioactive materials. These include the individual sources used in irradiators, Gamma Knife teletherapy devices, most radiography sources, some well logging sources, and others. Anyone possessing and using such sources is required to be a licensee of the NRC or one of the agency's 35 Agreement States and will be responsible for reporting information to the NSTS.

The NSTS will compile data regarding who possesses tracked sources—including the name and address of a facility, the license number and contact information. Information collected on each source will include the make, model, serial number, radioactive material, and activity. The information will include records of transfers—shipment and receipt—between licensees, from the original sale by the manufacture to eventual disposal.

The Internet will be the primary reporting tool for licensees to the NSTS via a secure, authenticated link. Licensees will have access to the information for their facility, but will not have access to information about other licensees. The data will not be available to members of the public.

Licensees requiring help in obtaining credentials and accessing the NSTS may contact the NRC's National Source Tracking System Help Desk via e-mail at NSTS.HELP@nrc.gov or via phone at (877) 671-6787. Additional information about the NSTS is available on-line at <http://www.nrc.gov/security/byproduct/nsts.html>.

NRC Makes Recommendation re Cesium Chloride Radiation Sources

U.S. Nuclear Regulatory Commission staff has recommended a continued emphasis on improving the security of cesium chloride radiation sources instead of replacing or banning them, citing their beneficial uses in medicine and industry and the lack of effective alternatives at the present time. In particular, staff recommends continued efforts to make irradiators and other devices containing cesium chloride more secure, including built-in security measures at the time of manufacture. The staff also recommends the Commission issue a policy statement that would articulate security requirements for these devices as well as the Commission's regulatory role, and encourage active development of alternative forms of cesium sources. The Commission has not yet voted on the staff recommendations.

"These radiation sources perform critical functions in blood sterilization and medical and industrial research, and society would suffer from a rush to replace them before effective alternatives are available," said Bill Borchardt, the NRC's executive director for operations. "Clearly the best course of action for now is to emphasize security improvements already in place and continually look for additional ways to enhance their security."

The International Atomic Energy Agency classifies these type of sources as Categories 1 and 2, which the NRC considers the most sensitive from a security standpoint. Cesium chloride sources have received special scrutiny because the cesium is a compressed powder that is highly soluble in water and dispersible as an aerosol. These sources are widely used in irradiators to sterilize human blood, in bio-medical and industrial research, and for calibration of radiation instrumentation and dosimetry.

Staff submitted its recommendation, thereby concluding an extensive review of security and use

of cesium chloride sources, on November 24, 2008. The review included public input obtained at a two-day forum in September 2008 that discussed alternative forms of cesium, alternative technologies, phase out and transportation issues, additional enhanced security, and potential future requirements for use of the material. More than 200 persons attended the forum.

In making its recommendation, staff considered the National Academies report titled, "Radiation Source Use and Replacement," which is dated February 2008. Staff also consulted with the Advisory Committee on the Medical Uses of Isotopes (ACMUI), which cited cesium chloride's advantages over other available technologies for use in blood irradiation and medical research. ACMUI recommended a continued emphasis on improving security of cesium chloride sources as an alternative to their removal or prohibition.

The NRC staff paper, "Strategy for the Security and Use of Cesium-137 Chloride Sources" (SECY 08-0184) and the ACMUI report on cesium chloride irradiators, are available at <http://www.nrc.gov/reading-rm/doc-collections/commission/secys/2008/> or on the agency's ADAMS system using accession code ML0830400770.

Organizations Requested to Report re Tritium Exit Signs

On January 16, 2009, the U.S. Nuclear Regulatory Commission reported that it has requested 61 organizations to check tritium exit signs in their possession against their records and to report any lost or missing signs to the agency. The action follows the identification by Wal-Mart of approximately 15,000 lost, missing or otherwise unaccounted for tritium exit signs at its stores and warehouses nationwide. Wal-Mart, which is keeping the NRC informed of its audit, planned to submit a formal report to the agency early in 2009.

Tritium exit signs pose little or no threat to public health and safety and do not constitute a security risk. However, the NRC requires proper record keeping and disposal of all radioactive materials. Proper handling and record keeping are important because a damaged or broken sign could cause minor radioactive contamination of the immediate vicinity, thereby requiring a potentially expensive clean up.

In the "demand for information" issued by NRC, the agency asked organizations possessing 500 or more tritium exit signs to report in writing to the NRC within 60 days information regarding regulatory compliance, the quantity of signs possessed and recorded, reasons for any discrepancies and responses thereto, and plans to prevent future loss. The contacted organizations were identified through NRC's General License Tracking System and include retail store chains, churches, federal and state agencies, school districts and universities, among others.

NRC reminded manufacturers and general licensees of the regulatory requirements for tritium exit signs in a Regulatory Issue Summary (RIS 2006-25) issued in December 2006. The requirements are also spelled out in NUREG-1556, Consolidated Guidance for Materials Licensees, Volume 16, Appendix L.

A Fact Sheet on tritium exit signs can be found on NRC's web site at www.nrc.gov.

USEC Gaseous Diffusion Plants Recertified

On December 23, 2008, the U.S. Nuclear Regulatory Commission announced the re-certification of two gaseous diffusion plants (GDPs) operated by the United States Enrichment Corporation (USEC). The re-certifications, which are valid until December 31, 2013, allow continued operation of the plants—which are located near Paducah, Kentucky, and Portsmouth, Ohio. Re-certification of the plants is required by the Atomic Energy Act of 1954 (AEA), as amended by the Energy Policy Act of 1992, which created USEC. The re-certifications establish that the plants are in compliance with safety, safeguards and security regulations established by the NRC for these facilities. USEC applied for the re-certifications in April of 2008.

As required by the AEA, NRC issued a report to Congress on the operation of the GDPs on December 17, 2008. During the five years covered by the report, the GDPs have provided adequate protection of health, safety, safeguards, security, and environmental conditions, and have generally operated in compliance with NRC regulations. Offsite radiological doses, as well as doses to workers, have been very low and well within regulatory limits. There have been no events resulting in significant release of radioactive materials at either site and USEC's performance has been acceptable.

USEC terminated enrichment operations at the Portsmouth GDP in 2001 and currently maintains the facility in a standby condition under contract to the U.S. Department of Energy. In May 2007, NRC issued a license to USEC to construct a gas centrifuge enrichment plant at the Portsmouth site.

NRC's report to Congress is available through the agency's ADAMS document retrieval system at <http://www.nrc.gov/reading-rm/adams/web-based.html> using accession number ML083400472. The letter transmitting the report to Congress is available on the same system using accession number ML083400468.

NRC Meets with USEC Plant Officials

On January 12, 2009, NRC staff met with USEC officials in Paducah, Kentucky to discuss the agency's latest review of regulatory safety performance at the Paducah GDP. The assessment is called a Licensee Performance Review and covers the period of operation from October 4, 2006 through October 3, 2008. Members of the public were allowed to attend the meeting and provided an opportunity to ask questions or make comments.

NRC staff evaluated performance at the Paducah plant in five major areas: safety operations, safeguards, radiological controls, facility support and special topics. NRC officials said that the review determined that the plant continues to conduct its activities in a safe manner, the agency found no areas needing improvement, and NRC inspection of the facility will continue at its current level.

On January 29, 2009, NRC staff held a pre-decisional enforcement conference with USEC officials in Atlanta to discuss an apparent violation at the Portsmouth plant of NRC requirements associated with the movement of a liquid uranium hexafluoride cylinder. The meeting was open to observation by the public and NRC officials were available at its conclusion to answer questions.

According to NRC officials, in September 2008, a plant employee discovered that a cylinder containing liquid uranium hexafluoride had been moved to a storage pad without using either an approved overhead crane or cart as mandated by the facility's safety requirements. An NRC inspection found that USEC took immediate corrective actions and completed a thorough investigation after the event, which did not result in a mishap.

Results of the Paducah performance review and the NRC's inspection report on the Portsmouth incident can both be found at www.nrc.gov/reading-rm/adams.html using accession numbers ML083460003 and ML090050150.

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

- ♦ solicited public comments regarding its preliminary conclusion that there are no environmental impacts that would preclude 20-year extensions of the operating license for the Three Mile Island 1 nuclear power plant;
- ♦ issued its Safety Evaluation Report with Open Items for the proposed renewal of the operating licenses for the Indian Point nuclear power plant, Units 2 and 3;
- ♦ announced that applications for 20-year renewals of the operating licenses for both the Crystal River Nuclear Generating Plant Unit 3 and the Palo Verde Nuclear Generating Station are available for public review;
- ♦ discussed the results of an inspection of the proposed aging-management approach related to the Susquehanna nuclear power plant's license extension request;
- ♦ announced the opportunity to request a hearing on an application to renew the operating license for the Cooper Nuclear Station for an additional 20 years;
- ♦ approved the operating license renewal of the Shearon Harris Nuclear Power Plant, Unit 1, for an additional 20 years; and,
- ♦ completed its final environmental impact statement for the Vogtle Electric Generating Plant, Units 1 and 2, and concluded that there are no environmental impacts that would preclude license renewal for an additional 20 years of operation.

Three Mile Island Nuclear Power Plant

On January 28, 2009, NRC staff held two meetings to solicit public comment regarding the agency's

Federal Agencies and Committees *continued*

preliminary conclusion that there are no environmental impacts that would preclude 20-year extensions of the operating license for the Three Mile Island 1 nuclear power plant. During the course of the meetings, staff discussed the findings and content of a draft environmental impact statement that was issued in December 2008 on the proposed license renewal. The meetings began with overviews, including a discussion of the contents of the report, which were then followed by public comment. In addition, NRC staff hosted informal discussions one hour prior to each meeting, although no formal comments on environmental issues were accepted during that time.

At the conclusion of the public comment period, NRC staff will consider and address the comments received and issue a final supplement to the Generic Environmental Impact Statement (GEIS) for the plant. That supplement will contain a recommendation regarding the environmental acceptability for license renewal.

The Three Mile Island Nuclear Station Unit 1 is a pressurized water reactor located 10 miles southeast of Harrisburg, Pennsylvania. The current operating license for Unit 1 expires on April 19, 2014. Three Mile Island's operator, AmerGen Energy Co., a subsidiary of Exelon Generating Co. LLC, submitted the renewal application on January 8, 2008.

Unit 2 was shut down in March 1979 following a partial meltdown and has been out of service since the event. It has been defueled and decontaminated to the extent that the plant is in a safe, stable condition suitable for long-term monitoring. Three Mile Island 1 was not affected by the accident and has had a safe operating record for many years.

A copy of the Three Mile Island renewal application is available on the NRC web site at <http://www.nrc.gov/reactors/operating/licensing/renewal/applications.three-mile-island.html>. The draft supplement to the GEIS for the facility can be found at www.nrc.gov/reading-rm/adams/web-based.html using accession number ML083350417.

Indian Point Nuclear Power Plant

On January 16, 2009, NRC announced the issuance of its Safety Evaluation Report (SER) with Open

Items for the proposed renewal of the operating licenses for the Indian Point nuclear power plant, Units 2 and 3. The SER documents the results of the NRC staff's review of the license renewal application and site audit of Indian Point's aging management programs to address the safety of plant operations during the period of extended operation. Overall, the results show that Indian Point's operator, Entergy Nuclear Operations, has identified actions that have been or will be taken to manage the effects of aging in the appropriate systems, structures, and components of the plant and that their functions will be maintained during the period of extended operation. By letter dated January 15, NRC provided Entergy with the SER and requested responses to the open items by March 16.

According to NRC, the issuance of an SER with Open Items is a typical milestone in a license renewal review. The SER identifies open items that still need to be addressed by the applicant before the staff can complete its review. The open items in this SER involve scoping of plant systems and components, aging management reviews, and aging management programs. After Entergy provides satisfactory information to address the open items, NRC staff will present its final conclusions on the license renewal application in an update to this SER. It is estimated that a final SER will be issued in late July 2009. NRC's Advisory Committee on Reactor Safeguards—an independent body of experts that advises NRC on reactor safety matters—plans to discuss the SER and license application at an upcoming meeting and will later issue a report discussing the results of its review.

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

Numerous governmental entities and organizations have submitted requests for a hearing on the Indian

Federal Agencies and Committees *continued*

Point license renewal application.

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

Crystal River Nuclear Generating Station

On January 16, 2009, NRC announced the availability of an application for a 20-year renewal of the operating license for the Crystal River Nuclear Generating Plant Unit 3. NRC staff is currently conducting its initial review of the application to determine whether it contains sufficient information required for the formal safety and environmental reviews. If the application has sufficient information, NRC will formally "docket" it and will announce an opportunity for the public to request an adjudicatory hearing on the renewal request.

NRC received the renewal application from Crystal River's operator, Progress Energy Florida, on December 18, 2008. The Crystal River plant is a pressurized-boiling water reactor located in Crystal River, Florida. The current operating license will expire on December 3, 2016.

The Crystal River Plant's renewal application is available at <http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html>.

Susquehanna Nuclear Power Plant

At a January 13 meeting with utility officials, NRC staff discussed the results of an inspection of the proposed aging-management approach related to the Susquehanna nuclear power plant's license extension request. After discussing the inspection results, NRC staff conducted a question-and-answer session regarding the review for interested members of the public.

PPL Susquehanna filed the renewal application on September 15, 2006. If approved, the expiration date for Unit 1 would be extended to July 17, 2042 and the expiration date for Unit 2 would be extended to March 23, 2044.

The draft environmental impact statement for Susquehanna, along with other related documents, is available on NRC's Agencywide Documents Access and Management System (ADAMS) at <http://www.nrc.gov/reading-rm/adams/web-based.html> by entering accession number ML081140337.

Cooper Nuclear Power Plant

On December 30, 2008, NRC announced the opportunity to request a hearing on an application to renew the operating license for the Cooper Nuclear Station for an additional 20 years. NRC recently determined that the application contains sufficient information for docketing and the beginning of safety and environmental reviews. A notice of opportunity to request a hearing was published in the *Federal Register*. Petitions may be filed by anyone whose interest may be affected by the license renewal and who wishes to participate as a party in the proceeding. The deadline for requesting a hearing is March 2, 2009.

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.

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

Palo Verde Nuclear Generating Station

On December 24, NRC announced that an application for a 20-year renewal of the operating license for the Palo Verde Nuclear Generating Station is available for public review. The Palo Verde plant, Units 1, 2 and 3—which is located 55 miles west of Phoenix, Arizona—has three pressurized water reactors. The current operating licenses will expire for Unit 1 on June 1, 2025; Unit 2 on April 24, 2026; and, Unit 3 on November 25, 2027. Palo Verde's operator, the Arizona Public Service Company, submitted the renewal application on December 11, 2008.

NRC staff is currently conducting its initial review

Federal Agencies and Committees *continued*

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 Palo Verde application is available on the NRC web site at <http://www.nrc.gov/reactors/operating/licensing/renewal/applications/palo-verde.html>.

Shearon Harris Nuclear Power Plant

On December 17, 2008, NRC announced that it has approved the operating license renewal of the Shearon Harris Nuclear Power Plant, Unit 1, for an additional 20 years. The Harris plant is a pressurized water reactor located about 20 miles southwest of Raleigh, North Carolina. The operator, Progress Energy, submitted an application for renewal of the license on November 16, 2006. Their current license would have expired on October 24, 2026. With the renewal, the license is extended until October 24, 2046.

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 that advises the Commission—issued its recommendation for approval of the renewal application on October 2, 2007.

The Shearon Harris nuclear plant’s license renewal application and NRC’s reports are available at <http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html>. The ACRS report may be found at <http://www.nrc.gov/reading-rm/doc-collections/acrs/letters/2008/>.

Vogtle Nuclear Power Plant

On December 11, 2008, NRC completed its final environmental impact statement for the Vogtle Electric Generating Plant, Units 1 and 2, and concluded that there are no environmental impacts that would preclude license renewal for an

additional 20 years of operation. As part of its environmental review of the application, NRC held public meetings near the plant and received and considered comments from members of the public, local officials, and representatives of state and federal agencies. Publication of the final EIS does not represent final agency action on the application. NRC staff is completing its safety evaluation report, and the NRC’s Advisory Committee on Reactor Safeguards will evaluate that report and make its recommendation before the agency makes a final decision.

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

A copy of the Vogtle plant license renewal application is available on the NRC web site at <http://www.nrc.gov/reactors/operating/licensing/renewal/applications/vogtle.html>. The final EIS can be found at <http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1437/supplement34/>.

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 51 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 consecutive pre-hearing conferences concerning applications for a COL and Early Site Permit (ESP) for the Vogtle site near Waynesboro, Georgia;
- ♦ suspended the principal portions of its reviews of COL applications for the River Bend site near Baton Rouge, Louisiana, and the Grand Gulf site near Vicksburg, Mississippi, following a request from the applicant;
- ♦ announced the opportunity to submit public comment on its evaluation of the environmental impacts of issuing a COL for a third nuclear reactor at the North Anna site in Louisa County, Virginia;
- ♦ announced the opportunity to participate in hearings on COL applications for a new reactor at the Fermi site near Monroe, Michigan and for two new reactors at the Levy County site near Crystal River, Florida;
- ♦ held public meetings to discuss environmental issues that the agency should consider in reviewing COL applications for a new reactor at the Bell Bend site near Berwick, Pennsylvania; for two new reactors proposed for the Comanche Peak site near Glen Rose, Texas; and, for two new reactors proposed for the Summer site near Columbia, South Carolina; and,
- ♦ docketed, or accepted for review, COL applications for the Nine Mile Point site near Oswego, New York and the Callaway site near Fulton, Missouri;

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.

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>.

Bell Bend

On January 29, 2009, NRC held a public meeting to discuss the environmental issues that the agency should consider in reviewing a COL application for a new reactor for the Bell Bend site near Berwick, Pennsylvania. In addition, staff was available for informal discussions with members of the public during an "open house" session in the evening, although formal comments on the environmental review were only accepted during the actual meetings.

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, 2008. The EPR is a 1,600 MWe large pressurized water reactor of evolutionary design that is currently under NRC review.

Information on the EPR review is available on the NRC web site at <http://www.nrc.gov/reactors/new-reactors/design-cert/epr.html>.

Vogtle

On January 28, 2009, the Atomic Safety and Licensing Board—an independent judicial arm of NRC—held consecutive pre-hearing conferences concerning applications for a COL and ESP for the Vogtle site near Waynesboro, Georgia. During the conferences, the board heard presentations and arguments regarding the relationship between Southern Nuclear's COL application and an application to amend the AP1000 reactor design previously certified by the NRC, as well as the availability of low-level radioactive waste storage at the Vogtle facility.

Southern Nuclear submitted the COL application and associated information for the Vogtle site on March 31, 2008. The company is seeking a license

Federal Agencies and Committees *continued*

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.

Information on the AP1000 review is available on NRC's web site at <http://www.nrc.gov/reactors/new-licensing/design-cert/amended-ap1000.html>.

Summer

NRC staff held public meetings on January 27-28, 2009 in Blair, South Carolina, to discuss the environmental issues the agency should consider in reviewing a COL application for two new reactors proposed for the Summer site near Columbia, South Carolina. In addition, staff was available for informal discussions with members of the public during "open house" sessions on both evenings, although formal comments on the environmental review were only accepted during the actual meetings.

The applicants, South Carolina Electric & Gas (SCE&G) and Santee Cooper, submitted the COL application and associated information on March 27, 2008. The application seeks approval to build and operate two AP1000 reactors at the site, which is located approximately 26 miles northwest of Columbia.

North Anna

On January 14, 2009, NRC announced the opportunity to submit public comment on its evaluation of the environmental impacts of issuing a COL for a third nuclear reactor at the North Anna site in Louisa County, Virginia—about 40 miles northwest of Richmond. The latest evaluation focuses on additional environmental impact information contained in the application. NRC staff also considered public input gathered during an earlier comment period. The NRC staff's preliminary conclusions in the draft evaluation include a finding that no environmentally preferable

or obviously superior sites have been identified, and that any adverse environmental impacts from possible site preparation and preliminary construction activities at North Anna could be redressed. At the conclusion of the public comment period, NRC staff will consider and address the comments provided. Staff expects to issue a final EIS on the environmental acceptability of a COL at the North Anna site by the end of 2009.

Dominion Virginia Power submitted a COL application for a new reactor at the North Anna site on November 27, 2007. The application seeks approval to build and operate an Economic Simplified Boiling Water Reactor (ESBWR) at each site. The ESBWR is a 1,500 Mwe design currently under NRC review for possible certification.

Information on the ESBWR review is available on NRC's web site at <http://www.nrc.gov/reactors/new-reactors/design-cert/esbwr.html>.

River Bend and Grand Gulf

On January 12, 2009, NRC announced that the agency has suspended the principal portions of its reviews of COL applications for the River Bend site near Baton Rouge, Louisiana, and the Grand Gulf site near Vicksburg, Mississippi, following a request from the applicant, Entergy.

Entergy applied to the NRC in February 2008 for Grand Gulf, and in September 2008 for River Bend, for COL's to build and operate an ESBWR at the site.

By letter dated January 9, 2009, Entergy informed NRC that the company is currently considering alternate reactor technologies for both sites and asked the agency to halt its work on the COL applications. In honoring this request, NRC is conducting an orderly closeout of environmental reviews done for the Grand Gulf COL. NRC will also continue interactions with the Federal Emergency Management Agency regarding emergency preparedness issues associated with the potential of additional reactors at the sites.

Federal Agencies and Committees *continued*

Once Entergy provides updated information regarding the applications, NRC will review the updates for completeness and determine whether full reviews can resume.

Fermi

On January 8, 2009, NRC announced the opportunity to participate in a hearing on a COL application for a new reactor at the Fermi site near Monroe, Michigan. NRC has issued a notice of opportunity to intervene in the proceeding on the application in the *Federal Register*. The deadline for requesting a hearing is March 9. Petitions may be filed by anyone whose interest may be affected by the proposed license, who wishes to participate as a party in the proceeding, and who meets the criteria set out in NRC's regulations.

Detroit Edison submitted the COL application's safety report and associated information on September 18, 2008. The company is seeking approval to build and operate an ESBWR at the site.

Comanche Peak

On December 19, 2008, NRC held public meetings in Texas to discuss the environmental issues that the agency should consider in reviewing a COL application for two new reactors for the Comanche Peak site near Glen Rose. In addition, staff was available for informal discussions with members of the public during an "open house" session in the evening, although formal comments on the environmental review were only accepted during the actual meetings.

The applicant, Luminant Power, submitted the COL application and associated information on September 19, 2008. 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.

Information on the US-APWR review is available on the NRC web site at <http://www.nrc.gov/reactors/new-reactors/design-cert/apwr.dcd.html>.

Nine Mile Point

On December 15, 2008, NRC announced that the agency has accepted for review a COL application for an EPR at the Nine Mile Point site near Oswego, New York. Docketing of the application does not indicate whether the Commission will approve or reject the request. NRC has established docket number 52-038 for this application. NRC expects to publish shortly a notice for opportunity to intervene in the required adjudicatory hearing.

The applicant, UniStar, submitted the COL application and associated information on September 30, 2008. It seeks approval to build and operate an EPR at the site.

Callaway

On December 15, 2008, NRC announced that the agency has accepted for review a COL application for an EPR at the Callaway site near Fulton, Missouri. Docketing of the application does not indicate whether the Commission will approve or reject the request. NRC has established docket number 52-037 for this application. NRC expects to publish shortly a notice for opportunity to intervene in the required adjudicatory hearing.

The applicant, AmerenUE, submitted the COL application and associated information on July 28, 2008. The application seeks approval to build and operate an EPR at the site, which is located approximately 10 miles southeast of Fulton.

Levy County

On December 8, 2008, NRC announced the opportunity to participate in a hearing on a COL application for two new reactors at the Levy County site near Crystal River, Florida. NRC has issued a notice of opportunity to intervene in the proceeding

on the application in the *Federal Register*. The deadline for requesting a hearing expired on February 6, 2009. Petitions may be filed by anyone whose interest may be affected by the proposed license, who wishes to participate as a party in the proceeding, and who meets the criteria set out in NRC's regulations.

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.

Final Rule Approved re Plant Security

On December 17, 2008, the U.S. Nuclear Regulatory Commission approved a rule that enhances security requirements for nuclear power reactors. Many of the requirements contained in the new rule are similar to those previously imposed by orders that were issued after the terrorist attacks of September 11, 2001. Several new requirements are contained in the rule, however, as a result of experience in implementing previous security orders. The rule also updates the regulatory framework in preparation for the licensing of new nuclear power plants and resolves three petitions for rulemaking that were considered during the development of the final rule.

More than four years of work, three public meetings and various opportunities for public comment went into development of the new rule. Significant stakeholder feedback was received during the process, which resulted in changes to the content, format and organization of the final rule.

Significant features in this rule include a safety/security interface section that requires plants to manage their activities in a manner so as to avoid potential adverse interactions between security and other plant activities. In addition, the rule includes new sections requiring a comprehensive cyber security program at nuclear power plants, and a requirement that plants develop strategies and response procedures to address an aircraft threat or loss of large areas of the facility due to explosions and fire. New training and qualification requirements for security personnel are also included.

The new rule also incorporates portions of a petition for rulemaking that was submitted by the Union of Concerned Scientists (UCS) and the San Luis Obispo Mothers for Peace to require that licensees evaluate whether proposed changes, tests,

or experiments cause protection against radiological sabotage to be decreased and, if so, to conduct such actions only with the approval of the NRC.

A second petition, submitted by Three Mile Island Alert, requested that the NRC require licensees to post at least one armed guard at each entrance to “owner controlled areas.” The final physical security requirements in the new rule give licensees flexibility to determine if such personnel postings are necessary.

A third petition for rulemaking, focusing on site access authorization and also submitted by the UCS was considered. Nonetheless, the recommendations contained in that petition were ultimately not adopted.

The rule went into effect thirty days following publication in the *Federal Register*, with licensees given a period of time to update their security plans to be compliant.

Workshop Held re Safety and Security Culture Policy Statement

On January 28, 2009, the U.S. Nuclear Regulatory Commission hosted a public workshop to discuss all issues involved in expanding the Commission's policy of safety culture to include security aspects and in applying the policy to all regulated facilities and users of nuclear materials.

The workshop—which was held at the agency's headquarters in Rockville, Maryland—was open to the public. NRC Chairman Dale Klein provided opening remarks stressing the importance of all nuclear plants and materials users establishing and maintaining a strong safety and security culture—a work environment where management and employees are dedicated to putting safety and security first.

Panels, which were made up of a range of stakeholders, discussed their views on questions such as:

- ◆ Should the NRC combine its expectations for safety culture and security culture or should the NRC keep its expectations separate?
- ◆ How should NRC increase attention to safety culture and security culture in the materials area?
- ◆ Does safety culture as applied to reactors need to be strengthened?

A detailed workshop agenda is available on NRC's web site at <http://www.nrc.gov/public-involve/public-meetings/index.cfm>.

Registration Open for NRC's 21st Annual Regulatory Conference

The U.S. Nuclear Regulatory Commission will hold its 21st annual Regulatory Information Conference (RIC) at the Bethesda Marriott North Hotel on March 10-12, 2009. More than 2,300 persons are expected to attend the conference, including representatives from more than 25 foreign countries, members of Congress and the nuclear industry. Agency speakers at the conference will include NRC Chairman Dale Klein and Commissioners Gregory Jaczko, Peter Lyons, Kristine Svinicki, and Executive Director for Operations William Borchardt.

The conference brings together NRC staff, plant owners, nuclear materials users and other interested stakeholders to discuss nuclear safety topics and significant and current regulatory activities. Topics at this year's RIC include:

- ◆ construction and licensing of new nuclear power plants;
- ◆ advanced reactor designs;
- ◆ security and safety research;
- ◆ domestic and international nuclear power plant operating experience and technical issues such as digital instrumentation and control and fire protection;
- ◆ operator training; and,
- ◆ safe disposal of nuclear waste.

The RIC, which is a joint presentation of NRC's Offices of Nuclear Reactor Regulation and Nuclear Regulatory Research, is free and open to the public. Early registration is encouraged, although on-site registration will also be available during the conference.

Persons interested in attending may register at the RIC web site and obtain a copy of the conference agenda at www.nrcric.org.

NRC Issues Performance and Accountability Report Summary

On January 15, 2009, the U.S. Nuclear Regulatory Commission announced the issuance of its FY 2008 Citizens' Report that provides a summary of the agency's fiscal year 2008 Performance and Accountability Report, which was released in November of 2008. The Citizens' Report highlights the agency's achievements in promoting nuclear safety and security while adhering to the principles of regulatory independence, transparency, and reliability.

"With the U.S. commercial nuclear industry poised for significant growth, it is more important than ever that the NRC provide effective and efficient regulatory oversight of nuclear materials and facilities, while prudently managing the resources entrusted to it by the American people," said NRC Chairman Dale Klein.

According to the report, during 2008, NRC oversaw the safe operation of 104 nuclear power plants and protection of the public in the use of nuclear materials in medicine, research and industry. To date, the agency is reviewing 17 Combined License applications to build and operate 26 new nuclear power plants. (See related story, this issue.) If approved and constructed, these proposed nuclear power plants would be the first new plants built in more than 30 years. In addition, the NRC 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 in Nevada. (See related story, this issue.)

A message from the NRC Chairman, the Citizens' Report and the Performance and Accountability Report are available on the lower left-hand corner of the NRC's web site at www.nrc.gov.

NRC Receives High Scores in Human Capital Survey

On January 9, 2009, the U.S. Nuclear Regulatory Commission announced that the agency has topped the Office of Personnel Management's 2008 employee survey in three of four areas and was second in the fourth category.

"It's very gratifying to see these results," said NRC Chairman Dale Klein. "This is a testament to our ongoing work in hiring, retaining and training the best people available to continue protecting the public and the environment."

Out of the 83 agencies represented in the survey, the NRC is first in the Talent Management, Job Satisfaction and Leadership & Knowledge Management indices. The NRC also ranked among the top 10 agencies in improving its scores in every index since the last survey.

In the Partnership for Public Service's "2007 Best Places to Work in the Federal Government" rankings (based on OPM's 2006 survey), the NRC was the top-ranked large agency in government. In the Partnership's 2005 rankings, the NRC ranked third among federal agencies and it was the top-ranked regulatory agency in government.

Obtaining Publications

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- DOE Public Affairs/Press Office(202) 586-5806
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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

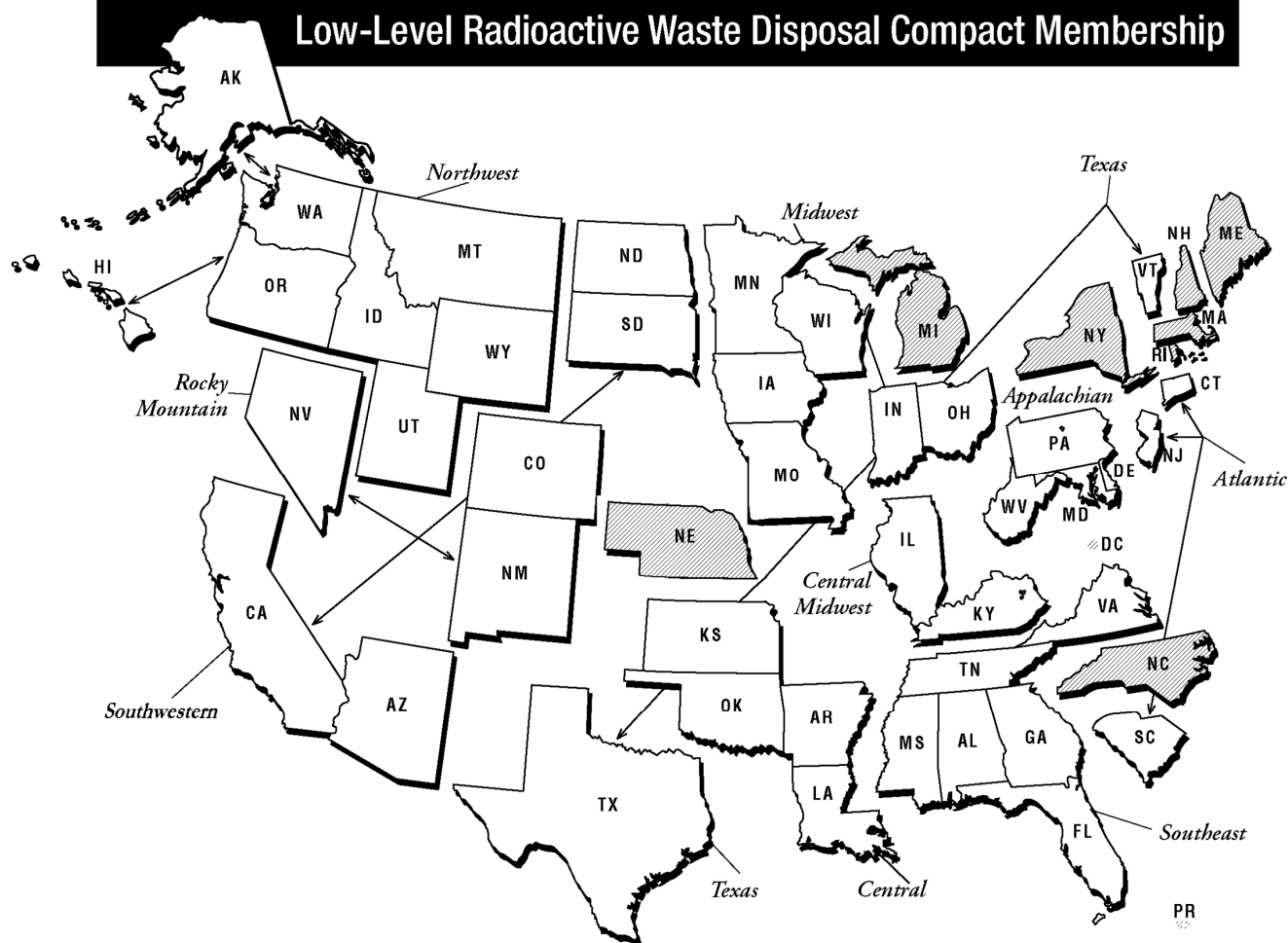
To access a variety of documents through numerous links, visit the web site for the LLW Forum, Inc. at www.llwforum.org

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



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Maryland
Pennsylvania
West Virginia

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Kansas
Louisiana
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Central Midwest Compact

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Idaho
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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

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