

# LLW *notes*

Volume 24, Number 4 July/August 2009

## ***U.S. Nuclear Regulatory Commission***

### **NRC to Host Depleted Uranium Workshops**

On June 24, 2009, the U.S. Nuclear Regulatory Commission published a *Federal Register* notice announcing plans “to conduct two public workshops to solicit public input on major issues associated with a potential rulemaking for land disposal of unique waste streams including, but not limited to, significant quantities of depleted uranium in near-surface radioactive waste disposal facilities.” (See 74 *Federal Register* 30,175 June 24, 2009.)

The agency has scheduled two workshops on depleted uranium, including one in Rockville, Maryland on September 2-3, 2009 and one in Salt Lake City, Utah on September 23-24, 2009. *Please note that the Salt Lake City meeting is scheduled for two-days following the upcoming LLW Forum meeting in Park City on September 21-22, 2009. Persons planning to attend both the LLW Forum meeting and the NRC workshop should therefore plan accordingly when making travel arrangements.*

During the workshops, NRC will solicit views from interested stakeholders that may be affected by the rulemaking. The public is invited to provide written comments on the issues presented in the *Federal Register* notice, as well as to attend

the workshops and provide feedback on the potential rulemaking.

#### **Logistics**

The location of and final agenda for each workshop will be noticed no fewer than ten days prior to each workshop on the NRC’s electronic public workshop schedule at <http://www.nrc.gov/public-involve/public-meetings/index.cfm>.

The workshops—both of which are scheduled from 8:00 am to 5:00 pm—will be held in a roundtable format with a facilitator. At the workshops, NRC “plans to discuss with stakeholders the issues to be considered in the rulemaking and the technical parameters of concern for a site-specific analysis associated with the disposal of unique waste streams, including

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

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# Low-Level Radioactive Waste Forum, Inc.

## LLW Notes

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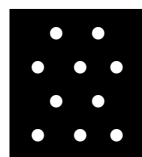
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## Key to Abbreviations

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.***

### **Fall 2009 LLW Forum Meeting Park City, Utah**

The fall 2009 meeting of the Low-Level Radioactive Waste Forum—which is being hosted by the State of Utah—will be held at the Marriott Hotel in Park City on Monday and Tuesday, September 21-22, 2009. (The Executive Committee will meet on Monday morning.) There will also be an optional site tour of the EnergySolutions' Clive facility on Tuesday afternoon for interested parties.

Immediately following the LLW Forum meeting, the U.S. Nuclear Regulatory Commission plans to host a full two-day workshop on depleted uranium at a different hotel in the Salt Lake City area on Wednesday and Thursday, September 23 - 24. (See related story, this issue.) This will be the second NRC workshop on this topic, with the first one being held at the agency's headquarters in Rockville, Maryland on September 2 - 3. The NRC workshops, which will be conducted in a roundtable format, will include an opportunity for public comment.

*Persons planning to attend the site tour and/or NRC workshop are encouraged to take note and plan accordingly when making their travel arrangements, as the site tour will not conclude until late afternoon or early evening and the workshop will require two additional days of travel.*

#### **Who Should Attend**

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.

#### **Registration & Hotel Reservations**

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 Marriott Hotel is 435/649-2900. The web address is [www.parkcitymarriott.com](http://www.parkcitymarriott.com). Please ask for a room in the Low-Level Waste Forum block.)

#### **Logistical Details**

To access the meeting bulletin and registration form, please go to [www.llwforum.org](http://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](mailto: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](http://www.llwforum.org).*

### **Fall 2009 Meeting**

The State of Utah will 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>. The meeting will include an optional site tour of interested participants at the Clive, Utah low-level radioactive waste disposal facility. (See related story, this issue.)

### **2010 Meetings**

The State of Texas and Waste Control Specialists will co-host the spring 2010 meeting in Austin, Texas. The meeting will be held at the Omni Austin Hotel—which is located in the heart of downtown—on March 22-23, 2010. The meeting will include an optional visit for interested parties to the WCS facility in Andrews County, Texas—which is located near Midland, Texas.

The State of New York has agreed to host the fall 2010 meeting in Saratoga Springs, New York from September 27-28, 2010. The meeting will be held at the Gideon Putnam Resort & Spa. (For additional information about the hotel, please go to [http://www.historichotels.org/hotel/Gideon\\_Putnam\\_Resort\\_Spa](http://www.historichotels.org/hotel/Gideon_Putnam_Resort_Spa).) The hotel is currently undergoing a major renovation to be completed in spring 2010. The Gideon Putnam is located in the center of Saratoga Spa State Park about 1 mile outside downtown Saratoga Springs. Within walking distance on park grounds are two golf courses, the National Museum of Dance, the Saratoga Automobile Museum, the historic Roosevelt Mineral Baths and 10 natural mineral springs.

### **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](mailto:LLWForumInc@aol.com).*

## LLW Forum Organizes Panel for RadWaste Summit

The Low-Level Radioactive Waste Forum, Inc. has agreed to organize a panel for the Third Annual RadWaste Summit. The meeting, which is sponsored by Exchange Monitor Publications and Forums, will be held at the JW Marriott Las Vegas Resort and Spa from September 8 – 11, 2009.

The session which is being organized by the LLW Forum is titled, "Life Without Barnwell: Assessing the First Year." It is scheduled for Thursday afternoon, September 10, beginning at 1:00 p.m. The LLW

*(Continued on page 42)*

### ***Atlantic Compact/State of South Carolina***

## **MOU Entered re Barnwell Rates and Operations**

### ***FY 2010 Rate Schedule Approved***

On June 30, 2009, Chem-Nuclear Systems LLC (“Chem-Nuclear”) and the South Carolina Budget and Control Board (“the Board”) entered into a Memorandum of Understanding (“MOU”) regarding operational issues and 2010 fiscal year disposal rates for the Barnwell low-level radioactive waste disposal facility. The South Carolina Department of Revenue (“DOR”) was also a signatory to the MOU with respect to a limited provision concerning the payment of disposal revenues to the state.

Earlier, on June 29, 2009, the Board approved an Alternative Rate Schedule for fiscal year 2010—which schedule became effective on July 1, 2009. The schedule provides for two pricing options. Option B, which applies upon election by the generator, provides for a quarterly access fee in lieu of disposal charges for individual shipments. Option A, which applies to those generators who do not elect Option B access fee pricing, applies the Maximum Uniform Rate Schedule to individual shipments.

### **Background**

The MOU was executed in recognition of the parties’ efforts to support continued access to the Barnwell facility.

In this regard, several major regional waste generators have recently notified the Board of plans to enter into agreements with Chem-Nuclear. The agreements are intended to ensure the economic viability of Barnwell despite the small volume of waste being received from a limited customer base and to eliminate any need to request public subsidies from the extended care

fund to cover essential operating costs and statutory obligations.

These generators have requested that the Board establish annual disposal rates and/or access fees at a break-even level that will yield revenues sufficient to safely and economically operate the facility and meet all statutory and regulatory obligations. Such action is consistent with the Atlantic Compact statute and South Carolina regulations that provide that the regional fee schedule shall be reasonable and sufficient to cover all costs related to the development, operation, closure, post-closure observation and maintenance, and institutional control of the Barnwell facility.

### **MOU Agreements**

The following are highlights from the MOU. Persons interested in more detailed information are directed to the document themselves.

- ◆ In consultation with Chem-Nuclear, the Atlantic Compact Commission and waste generators, the Board will establish an annual rate schedule that attempts to equal, but not exceed, the required costs to safely operate Barnwell for the fiscal year (plus or minus adjustments from prior fiscal years) and cover all allowable costs as identified by the South Carolina Public Service Commission (PSC) and all statutory obligations associated with the facility except for those costs paid from the Decommissioning Trust Fund or Extended Care Fund. (For fiscal year 2010 only, however, the revenue requirement on which the disposal rates are based will be reduced by \$500,000 due to the availability of carry-over funds.) In any fiscal year, if Chem-Nuclear provides a binding commitment to voluntarily accept less compensation than authorized by the PSC, than the revenue requirement and resulting disposal rates may be reduced. Pricing on non-routine waste (such as irradiated hardware shipments, steam generators and other large components) will

## States and Compacts *continued*

be calculated on a case-by-case basis in an amount sufficient to cover all operating costs associated with their disposal. Excess disposal revenue collection will be refunded annually on a pro-rata basis to generators that enter into agreements to cover operating shortfalls, whereas shortages will be annually invoiced to such generators on a pro-rata basis unless voluntarily waived by Chem-Nuclear.

- ◆ The Board or its designee shall—consistent with all laws, regulations and procedures—approve disbursements from the Barnwell Decommissioning Trust Fund and/or the Barnwell Extended Care Fund in an amount not to exceed \$2,020,000 each fiscal year (adjusted in March of each fiscal year in accordance with the most currently available monthly Producer Price Index for the Net Output of Selected Industries in the category of “Other Selected Traditional Service Industries,” or another index mutually agreeable to Chem-Nuclear and the Board) to cover institutional costs at Barnwell and its surroundings. Institutional costs include costs for the monitoring and custodial care of closed areas of the facility; costs of monitoring areas adjacent to the Barnwell property to assess regulatory compliance; and, a portion of the total costs for monitoring, security, custodial care, and other shared costs of common areas of the Barnwell property.
- ◆ Prior to the beginning of each fiscal year, Chem-Nuclear shall provide binding assurances to the Board that no public funds will be requested to cover shortfalls in the amount of disposal revenues received to cover the site operator’s cost of operating the disposal facility and the operator’s operating margin. If unanticipated operating costs result in a deficit that is determined not to be the responsibility of the generators, funds may be used from the Barnwell Operational Shortfall Escrow Account.

- ◆ Chem-Nuclear shall submit a payment to the DOR within 30 days following the end of the fiscal year. The annual payment shall be the total revenues received by June 30 for waste received in that fiscal year—minus allowable costs and operating margin; statutory assessments and obligations for the fiscal year not previously paid; and any over-collection of fees and charges from disposal customers that are eligible for a refund. Chem-Nuclear may also retain not more than \$1,000,000 from fiscal year 2009 disposal receipts and \$500,000 from each year’s disposal receipts thereafter. The purpose of the carry-over funding is to provide a cash flow cushion (a) to cover allowable operating costs and margin prior to the accumulation of positive cash flows in a new fiscal year, and (b) to ensure the availability of funds to cover operating costs at any time during the fiscal year if and when available cash receipt balances are not sufficient to cover these costs due to short-term lags caused by the billing cycle.

The MOU is limited to certain stipulations between the parties regarding reimbursement for disposal site operation and the establishment of disposal rates and is not intended to alter other rights and obligations of the parties. Any party may terminate the MOU with 90 days prior written notice, with such termination becoming effective on the final day of a fiscal year or another mutually agreeable date. Unless terminated, the MOU shall remain in effect so long as South Carolina is the host state for the Atlantic Compact region and the Barnwell site is limited to the disposal of waste generated in-region.

### **Alternative Rate Schedule**

The following are highlights from the Alternative Rate Schedule. Persons interested in more detailed information are directed to the schedule themselves.

## States and Compacts *continued*

- ◆ An individual nuclear power reactor, or any non-reactor waste generator with a permit to ship waste to Barnwell, is eligible to elect Option B Access Fee pricing. Generators that elect this option commit to the payment of an annual access fee, to be paid in quarterly installments even if the generator does not plan to ship waste during any specific quarter. Such generators must provide Chem-Nuclear with a volume projection and shipping schedule for fiscal year 2010, making updates throughout the year as necessary. Becoming an Option B participant terminates, effective July 1, 2009, any “Volume Hold” disposal agreement that the generator had with the Board pursuant to the August 2006 special disposal rate offer.
- ◆ An interim revenue requirement in the amount of \$4,561,000 shall be used as the basis for determining the quarterly access fee for each Option B participant. The amount of the quarterly access fee will be determined by dividing the interim revenue requirement for operating costs (less the amount of payments projected to be received from Option A disposal rate customers) evenly among all Option B participants, and dividing the result by four quarters. If annual revenue collections exceed actual operating costs, Chem-Nuclear will return an even share of the over-collected amount (as adjusted for any authorized carry-over funds) to each Option B participant by July 30, 2010.
- ◆ Each Option B participant will be allocated an equal share of 7,000 cubic feet of disposal capacity (volume allocation), which may be disposed at no further charge. A company may pool its volume allocations upon written notification to Chem-Nuclear prior to August 1, 2009. Unused allocations may be transferred to another Option B participant by providing Chem-Nuclear with a signed statement executing the transfer.
- ◆ Option B participants will be assessed an additional charge of \$133 per cubic foot for waste received that is in excess of the participant’s volume allocation. The additional charge will be used to cover variable costs and margin related to acceptance of the waste. This variable cost surcharge does not apply to any waste resulting from the transfer of excess volume allocation from one participant to another.
- ◆ The PSC is expected to provide final approval of allowable operating costs for fiscal year 2010 no later than June 30, 2011. If the approved total operating costs and margin is less than the amounts paid through Option B Access Fees and variable cost surcharges, plus payments received for any Option A disposal charges, then each Option B participant will receive a pro-rata refund within 30 days of the end of the fiscal year. If the approved allowable costs and margin exceed the interim revenue requirement, then each Option B participant will be invoiced for an equal share of the difference, unless voluntarily waived by Chem-Nuclear.
- ◆ Irradiated hardware and large components are not included in the Volume Allocations and are not considered as waste in excess of volume allocations. Pricing on these items will be calculated on a case-by-case basis in an amount sufficient to cover all allowable operating costs incurred by Chem-Nuclear to dispose of this waste.

*A copy of the MOU and the fiscal year 2010 Alternative Rate Schedule will be available shortly on the Board’s web site at [www.energy.sc.gov](http://www.energy.sc.gov).*

*For additional information, please contact Bill Newberry, Director of the Radioactive Waste Disposal Program, at (803) 737-8037 or at [bnewberry@energy.sc.gov](mailto:bnewberry@energy.sc.gov).*



***Northwest Compact/State of Idaho***

## **Westinghouse Proposes Disposal at Grand View Facility**

On July 28, 2009, the U.S. Nuclear Regulatory Commission held a public meeting in Bruneau, Idaho to brief members of the public on a proposal by Westinghouse Electric Company to dispose of low-activity radioactive materials at US Ecology's disposal facility in Grand View, Idaho. The meeting, which was held from 6:00 p.m. to 8:30 p.m., was held in the auditorium of the Rimrock Jr. High School.

Westinghouse is currently decommissioning its Hematite nuclear fuel fabrication facility in Jefferson County, Missouri. The company has requested a license amendment and authorization from NRC to dispose of some low-activity radioactive waste—including small amounts of “special nuclear material” (enriched uranium and plutonium)—at the US Ecology facility. Westinghouse has also asked NRC to exempt US Ecology from the agency's licensing requirements for radioactive byproduct material and special nuclear material.

During the July 28 meeting, NRC staff explained the Westinghouse proposal and the agency's review process—including the development of an environmental assessment. The staff also explained further opportunities for public involvement, including the opportunity to request an adjudicatory hearing.

Westinghouse has requested authorization to dispose of the material at the US Ecology facility through a provision of NRC regulations at 10 CFR 20.2002. Information on this procedure is available on the agency Web site at <http://www.nrc.gov/waste/llw-disposal/10cfr20-2002-info.html>.

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

## **Utah Submits Views to NRC re Foreign Waste Application**

On June 19, 2009, the State of Utah submitted its views to the U.S. Nuclear Regulatory Commission concerning how the agency should proceed with regard to an application from EnergySolutions to import up to 20,000 tons of potentially radioactively contaminated material from Italy and to export for return to generators in Italy any of the imported waste that can not be recycled or does not meet the Clive facility's waste acceptance criteria for disposal.

For the reasons stated below, Utah asserts that NRC should continue to hold the proceeding on this matter in abeyance until the issue of the Northwest Compact's authority over the Clive site has been fully resolved and until EnergySolutions has submitted all material information required under 10 CFR Part 110.

### **Background**

EnergySolutions filed its initial application with NRC on September 14, 2007. (See *LLW Notes*, November/December 2007, pp. 6-9.) The Northwest Compact objected to the proposal, maintaining that its current resolution and order authorizing EnergySolutions' Clive facility to dispose of low-level radioactive waste from other compacts and unaffiliated states did not apply to foreign waste.

On May 5, 2008, EnergySolutions initiated a lawsuit in the U.S. District Court for the District of Utah, Central Division that, among other things, challenges the Northwest Compact's authority over the Clive facility. (See *LLW Notes*, May/June 2008, pp. 25-28.)

On October 6, 2008, the Commission issued Order CLI-08-24 holding in abeyance

## States and Compacts *continued*

EnergySolutions' import and export applications relating to the Italian waste proposal, as well as a decision on hearing requests—including one from the State of Utah. (See *LLW Notes*, October/November 2008, pp. 18-20.) In so doing, the Commission found "it would be ineffective to devote further adjudicatory (and NRC Staff) resources to this proceeding ... [u]ntil a court of competent jurisdiction determines that the Northwest Compact cannot exclude foreign waste from the Clive facility."

On May 15, 2009, the district court ruled that Clive is not a "regional disposal facility" as defined under law and that, with regard to the importation of low-level radioactive waste from outside of the compact region, the Northwest Compact does not have the authority to restrict access to the Clive disposal facility. (See *LLW Notes*, May/June 2008, pp. 25-28.) The court further ruled, however, that the Northwest Compact has authority to regulate the disposal of low-level radioactive waste that is generated within the compact's regional boundaries—including restricting disposal access for such waste to the Clive facility.

All three defendants to the action—the Northwest Compact, the Rocky Mountain Board, and the State of Utah—have announced plans to appeal the court's ruling. (See related story, this issue.)

### Utah's Filing With the NRC

In its filing with NRC, the State of Utah argues that there is just cause for the Commission to continue holding the proceeding in abeyance.

For one thing, the state asserts that the legal standard on review of the district court's decision is *de novo*, with no deference given to the district court on questions of law, and there is therefore a reasonable potential for the district court to be reversed on appeal. If the lower court is overturned on appeal and the Northwest Compact's authority affirmed, the state points out "Italian waste awaiting disposal could become

orphaned or may need to be placed in indeterminate storage in the United States." Furthermore, any such waste already disposed at Clive "may need to be recovered or exported back to Italy."

In addition, Utah argues that the proceeding should be held in abeyance since EnergySolutions has not submitted all material information required to process the application, to adjudicate challenges raised in the hearing requests, and for the Commission to make an informed decision on the applications under 10 CFR Parts 51 and 110. "Regardless of the underlying reasons why EnergySolutions will not characterize or classify the Italian waste until it has an import license and an export license in hand, the regulations require otherwise," states Utah in its filing. "To satisfy the Commission's safety findings, the material information an applicant must submit for a license to import radioactive material includes, *inter alia*, 'the volume, classification (as defined in § 61.55 of this chapter), [and] physical and chemical characteristics ... of the waste.'" According to Utah, the application should be rejected or at least further review held in abeyance—regardless of the availability of a disposal site—if EnergySolutions continues to be unwilling to provide such material information to the NRC at this time.

### ***Southwestern Compact/State of California***

## **CalRad Forum Writes NRC re LLW Issues**

By letter dated June 18, 2009, the California Radioactive Materials Management Forum (CalRad Forum) expressed its appreciation to the U.S. Nuclear Regulatory Commission for hosting a briefing on low-level radioactive waste disposal and related issues on April 17, 2009. In the letter, CalRad Forum expressed its view that the “current national LLRW system needs substantial improvement to assure access to disposal for all non-DOE LLRW.” The briefing, according to CalRad Forum, “served to illustrate these problems as well as providing an opportunity to present solutions.”

### **Background**

At the request of the Commissioners, the NRC hosted a briefing on low-level radioactive waste management and disposal and related issues on April 17, 2009. (See *LLW Notes*, March/April 2009, pp. 1, 30-36.) The briefing—which was announced in 74 *Federal Register* 12,401 (March 24, 2009)—included presentations by a variety of speakers and was open to the general public for observation. A representative from the Low-Level Radioactive Waste Forum participated in the briefing, at the invitation of NRC Commissioners.

The briefing was divided into two parts. In the morning, from 9:30 a.m. to 11:30 a.m., NRC staff provided presentations on a broad range of low-level radioactive waste issues. In addition, representatives from the U.S. Department of Energy’s (DOE) Office of Environmental Management and the National Nuclear Safety Administration (NNSA) gave presentations. The afternoon session went from 1:30 p.m. to 3:30 p.m. and included a state regulators panel (TCEQ,

LLW Forum, OAS and CRCPD) and a waste generators/other stakeholder’s panel (NEI, CRSO, CORAR, NIRS). A Commission question and answer session followed each panel.

During the course of the briefing, some presenters stated that cost-effective waste disposal options are needed for the use of radioactive material in nuclear medicine biomedical research and that key radionuclide research projects are no longer available due to high disposal costs. After the briefing, the Commission directed NRC staff to work with stakeholders to develop a list or catalog of important research that has been impacted and/or stopped due to a lack of disposal options. Staff decided to expand its inquiry to include the use of other radioactive material as well.

### **CalRad’s Letter**

In the letter, CalRad Forum states that it has reviewed the Commission’s Staff Requirements Memorandum (SRM) dated May 1, 2009, and agrees with the Commission’s emphasis on the disposal of sources and its instruction to staff to work with outside organizations to compile a list of research that has been impacted or stopped due to a lack of waste disposal options. CalRad Forum suggests, however, that the Commission add the disposal of biological waste and expresses disappointment “that the SRM makes no specific mention of the lack of disposal options for 34 states for Class B and C wastes.”

In regard to the latter, CalRad’s letter provides a quantitative estimate of the problem using information available in the U.S. Department of Energy’s Manifest Information and Management System (MIMS) for 2005 through 2007—the last three calendar years in which out-of-region waste was accepted for disposal at the Barnwell facility. Tables were developed to present the disposal data—which CalRad categorized by total volume, total activity, and volume and activity by waste class and generator type. One table presents disposal data for waste from all states at all disposal facilities in a given year. Another table

presents disposal data for waste from the 34 states now without access to disposal facilities for Class B and C waste.

According to CalRad Forum's calculations, in 2005 through 2007, Class B and C waste from the 34 states now lacking disposal access accounted for 85.6%, 89.3%, and 93.3% of all activity from all states at all disposal facilities. CalRad Forum acknowledges that much of this waste, however, is generated by utilities with on-site storage capabilities.

Comparing activity in non-utility Class B and C wastes for the 34 states without disposal access with the activity in all non-utility wastes (Class A, B and C) from all states, CalRad Forum calculates the resulting ratios for 2005 through 2007 to be 72.5%, 22.5%, and 41.9% respectively. "While there is considerable year-to-year variation in this ratio, the problem with disposal of the more hazardous categories (Classes B and C) of non-utility LLRW from states without access to disposal for these wastes is clearly substantial and argues for serious modification of the current LLRW disposal system," concludes CalRad Forum.

### ***Texas Compact***

## **Texas Compact Publishes Proposed Volume Estimate**

On June 26, 2009, the Texas Low-Level Radioactive Waste Disposal Compact Commission (the "Commission") published its initial proposed 1995 – 2045 Waste Volume Estimate in the *Texas Register* that concludes as follows:

"Because of the need for Vermont to have at least 1,000,000 cubic feet of capacity in the Texas site, and because the need for Texas generators is currently estimated to be at least 5,000,000 cubic feet, and because of the uncertainties associated with making fine estimates of the anticipated capacity need, the Compact Commission's estimate is a total waste disposed quantity from the party states of Texas and Vermont of 6,000,000 cubic feet, of which 5,000,000 would be available to generators in Texas and 1,000,000 available to generators in Vermont."

### **Background**

Section 3.04(11) of the Texas Compact provides an instruction that the Commission shall:

"By no later than 180 days after all members of the commission are appointed under Section 3.01 of this article, establish by rule the total volume of low-level radioactive waste that the host state will dispose of in the compact facility in the years 1995 – 2045, including decommissioning waste. The shipments of low-level radioactive waste from all non-host party states shall not exceed 20 percent of the volume estimated to be disposed of by the host state during the 50-year period. When averaged over such 50-year period, the total of all shipments from non-host party states shall not exceed 20,000 cubic feet a year. The commission shall coordinate the volumes, timing, and frequency of shipments from generators in the

## States and Compacts *continued*

non-host party states in order to assure that over the life of this agreement shipments from the non-host party states do not exceed 20 percent of the volume projected by the commission under this paragraph.”

In developing the proposed rule, the Commission reviewed two studies of waste disposal volumes that were prepared by the State of Texas in 1994 and in 2000. In addition, on April 14, 2009, the Commission held a stakeholders’ meeting to, among other things, solicit information from generators and other interested stakeholders regarding current projected waste disposal volumes for the site during the disposal period in order to assist it in determining if and how such previous studies may need to be adjusted. (See *LLW Notes*, March/April 2009, pp. 15-16.)

During the course of the April 2009 meeting, generators noted changes and advances in technologies since some of the early estimates of volume were projected. In addition, they stated that disposal volume estimates would depend on disposal costs and disposal alternatives. There was also discussion about the potential for expansion of nuclear generating capacity in Texas between 2009 and 2045, as well as about whether the Vermont Yankee facility license would be extended and when decommissioning of that facility might take place. Nobody present at the meeting objected to the Commission issuing a rule that contains a higher estimate of disposal volume given the uncertainties in making the estimate of a quantity of waste sent to a site for disposal.

### **Analysis**

In reviewing its charge, the Commission noted that the sole requirement in Section 3.04(11) of the Texas Compact is one of estimating volume. Neither the Compact nor the law says anything about the character, classification, number of curies, half-life, or form of the waste with regard to such estimate. The sole direction to the Commission is for it to adopt a rule estimating the

volumes of radioactive waste that the host state will dispose of in the compact facility in the years 1995 – 2045.

The Commission also took note that, when asked, Vermont indicated that its needs would probably meet or exceed 1,000,000 cubic feet of capacity based on observed experiences during decommissioning of the Maine Yankee generating facility. Similar decommissioning requirements in Vermont indicate that the volume could be similar to that generated in the Maine decommissioning process. Accordingly, the Commission focused on whether the Texas disposal volume would be sufficient to allow Vermont to have 1,000,000 cubic feet of disposal capacity.

After consideration, the Commission determined that there is no need to estimate the Texas radioactive waste disposal capacity in Texas at less than a total of 5,000,000 cubic feet given the previous estimates made by Texas of volumes; given that there are four existing generating units in Texas that are similar in size to those decommissioned in Maine and that the licenses of those facilities may expire during the 50-year estimate period; given that decommissioning waste volumes resulting from the closure of the Maine Yankee facility were approximately 1,000,000 cubic feet and there are radioactive wastes being generated in Texas that will require disposal in addition to the decommissioning wastes; given that there are plans for the addition of new generating units in Texas during the 50-year estimate period; given that the generators state that there is a relationship between waste generation and KW size of generating plants and that additions of nuclear generating capacity in Texas will increase the need for yearly disposal capacity; given that no one present at the stakeholder meeting objected to an estimate of waste disposal volume that may be in excess of actual disposal volume during the estimate period, and given the uncertainties in attempting to finely estimate the quantity of waste that will be tendered to any disposal site in Texas during the period.

## States and Compacts *continued*

The Commission pointed out that there might be a question as to whether an estimate for Texas of 5,000,000 cubic feet of disposal capacity is sufficient. However, the Commission determined that nothing in the Compact or statute creating the Commission prevents it from revisiting the question of the volume of radioactive waste to be disposed when more information becomes known and thence making appropriate amendments to its affected rule or rules.

Finally, the Commission noted that the establishment of the initial proposed waste volume estimate does not address the question of whether the proposed facility will have the capacity or will be licensed to accept for disposal the quantity of waste being estimated by the Commission. The disposal site's licensee must address these matters with the licensing agency, as the Commission does not have the authority or power to grant any license to any disposal site.

### **Comment Period**

Comments may be submitted on the proposed rule for a period of 30 days from its publication in the *Texas Register*.

Comments should be submitted to Robert Wilson at 711 West 7<sup>th</sup> Street, Austin, Texas 78701. Comments may also be faxed to (512) 225-5565 or submitted via email to [bwilson@jacksonsjoberg.com](mailto:bwilson@jacksonsjoberg.com).

### **License Application Status**

On January 14, 2009, TCEQ Commissioners denied hearing requests and approved an order on Waste Control Specialists LLC (WCS) Radioactive Material License application, No. R04100. (See *LLW Notes*, January/February 2009, pp. 1, 9-11.) 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 a copy of the initial proposed 1995 – 2045 Waste Volume Estimate, please go to <http://www.sos.state.tx.us/texreg/archive/June262009/index.html> or <http://www.sos.state.tx.us/texreg/pdf/backview/0626/index.shtml>.*

*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](http://www.tceq.state.tx.us/permitting/radmat/licensing/wcs_license_app.html) or contact the Radioactive Materials Division at (512) 239-6466.*

## Texas Compact Holds Meeting re Proposed Import and Export Rules

On August 7, 2009, the Texas Low-Level Radioactive Waste Disposal Compact Commission held a stakeholder meeting in Austin, Texas to discuss

- ◆ a proposed new rule governing the export of low-level radioactive waste for management and/or disposal pursuant to Sections 2.01(4), 2.01(11), 3.05(7) 3.05(8), 6.01, and 6.03 of the Texas Low-Level Radioactive Waste Compact (Public Law 105-236) as compiled in Chapter 403, Texas Health and Safety Code; and,
- ◆ a plan to establish rules and procedures relating to importation of low-level radioactive waste for management or disposal pursuant to Sections 2.01(4), 2.01(11), 3.05 (6), 6.02 and 6.03 of the Texas Low-Level Radioactive Waste Compact (Public Law 105-236) as compiled in Chapter 403, Texas Health and Safety Code.

Three Commission members—including Chair Michael Ford and Commissioners Uldis Vanags and Robert Gregory—attended the meeting. A meeting notice and agenda for the meeting was distributed to interested parties, but was not posted in the *Texas Register* on the advice of counsel since a quorum of members of the Commission would not be in attendance.

*For additional information, please contact Margaret Henderson, Interim Executive Director of the Texas Compact Commission, at (970) 519-1588 or at [margaretherderson@tllrwdcc.org](mailto:margaretherderson@tllrwdcc.org).*

## Texas Compact Holds August Meeting

The Texas Low-Level Radioactive Waste Disposal Compact Commission hosted a regular meeting on August 19, 2009.

The meeting—which was open to the public—began at 8:30 am in the Brazos III meeting room of the Marriott Courtyard Residence Inn in Austin, Texas.

### Agenda

Some highlights from the agenda included the following:

- ◆ discussion of and possible vote on the so-called "volume" rule;
- ◆ discussion of and possible vote on a new rule governing the export of low-level radioactive waste;
- ◆ consideration of and possible vote on generator petitions for the export of low-level radioactive waste to management and disposal facilities outside of the Texas Compact;
- ◆ discussion of and possible vote to approve the development of a plan to establish rules and procedures relating to the importation of low-level radioactive waste pursuant to the Texas Compact;
- ◆ report of the Committee on Amicus Brief and discussion, consideration and possible vote on joining as amicus curiae in the Southeast Compact's lawsuit against North Carolina and EnergySolutions' lawsuit against the Northwest Compact;
- ◆ report of, discussion on, and possible action pertaining to the bylaws, policies and

## States and Compacts *continued*

operating rules, rulemaking, records management, and finances;

- ◆ discussion and possible action on funding and budgetary issues, hiring for services, information technology, and equipment; and,
- ◆ discussion of the date, location and agenda items for the next compact commission meeting.

*A copy of the agenda has been posted in the Texas Register at [http://info.sos.state.tx.us/pls/pub/pubomquery\\$omquery.queryTRD?p\\_trd=2009006030](http://info.sos.state.tx.us/pls/pub/pubomquery$omquery.queryTRD?p_trd=2009006030).*

*For additional information, please contact Margaret Henderson, Interim Executive Director of the Texas Compact Commission, at (970) 519-1588 or at [margaretherderson@tllrwdcc.org](mailto:margaretherderson@tllrwdcc.org).*

### **Compact Commission**

On November 25, 2008, Texas Governor Rick Perry (R) announced appointments to the Commission. (See *LLW Notes*, November/December 2008, p. 9.) The Commission, which was created pursuant to Senate Bill 1206 in the 73<sup>rd</sup> 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.

The Commission held its first meeting on February 13, 2009, and has held various meetings since then. (See *LLW Notes*, January/February 2009, pp. 8-9 and March/April 2009, pp. 11-13.)

### **License Application Status**

On January 14, 2009, TCEQ Commissioners denied hearing requests and approved an order on Waste Control Specialists LLC (WCS) Radioactive Material License application, No. R04100. (See *LLW Notes*, January/February 2009, pp. 1, 9-11.) 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](http://www.tceq.state.tx.us/permitting/radmat/licensing/wcs_license_app.html) or contact the Radioactive Materials Division at (512) 239-6466.*



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

## Hearing Opportunity re South Texas Project

On July 10, 2009, the U.S. Nuclear Regulatory Commission announced the notices of consideration of approval and opportunity for a hearing on the proposed indirect license transfer resulting from the proposed merger between Exelon Corporation and NRG Energy, Inc.

Exelon submitted the application on January 29 for the indirect transfer of NRG's 44 percent share of interest in STP Nuclear Operating Company's South Texas Project, Units 1 and 2. The company subsequently filed a supplement to the application on March 18.

Notices of consideration of approval, request for a hearing and a petition for leave to intervene were published by NRC in the *Federal Register* and can be found at <http://www.nrc.gov/reading-rm/doc-collections/cfr/fr/2009/>. The deadline for requesting a hearing was July 29 and the end of the comment period was August 6.

NRC is reviewing the application and has not made any decision regarding the outcome of its review. Petitions may be filed by anyone whose interest may be affected by the Commission's actions on the application, who wishes to participate as a party in the proceeding, and who meets the criteria set out in NRC's regulations.

NRC's review of indirect license transfer requests considers issues such as foreign ownership; control or dominance ownership; and, whether the proposed change in corporate control will affect the licensee's financial and technical qualifications.

*A copy of the submitted application and supplemental application are available in the NRC's Agencywide Documents Access and Management*

*Systems (ADAMS) under accession number ML090420400 and ML090850487, respectively. ADAMS is accessible via the agency's Web site at <http://www.nrc.gov/reading-rm/adams.html>. Help in using ADAMS is available by contacting the NRC's Public Documents Room at (800) 397-4209 or (301) 415-4737, or by e-mail via [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov).*

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## ***State of Michigan***

## Meeting Held re Fermi Decommissioning Plan

On June 30, 2009, staff of the U.S. Nuclear Regulatory Commission held a public meeting in Monroe, Michigan to discuss the proposed license termination plan for the Enrico Fermi Atomic Power Plant, Unit 1, as well as NRC's technical review of the plan. The meeting, which took place from 7:00 p.m. to 10 p.m., was held at the Monroe County Board of Commissioners.

The licensee, DTE Energy, submitted its proposed license termination plan and an application for license amendment on March 25. They propose to demonstrate compliance with NRC criteria for unrestricted release of the property, although the facility will remain DTE property. No spent nuclear fuel remains on-site from Fermi 1.

Fermi 1, which began operation in 1963, was a sodium-cooled fast-breeder reactor. The plant was shut down in 1972. Much of the decommissioning was completed in 1975. Fermi 2, a boiling-water reactor, is still in operation. Both units are located in Newport, in Monroe County, on the shore of Lake Erie about 25 miles northeast of Toledo, Ohio.

*(Continued on page 42)*

***Alabama, et. al. v. North Carolina*****Compacts File Amicus Brief in Southeast Compact Lawsuit**

On July 15, 2009, several compacts—including the Rocky Mountain Low-Level Radioactive Waste Board, the Northwest Interstate Compact Committee on Low-Level Waste Management, the Central Interstate Low-Level Radioactive Waste Commission, and the Midwest Interstate Low-Level Radioactive Waste Commission—jointly filed an Amicus Brief in a lawsuit initiated by the Southeast Interstate Low-Level Radioactive Waste Management Commission (“the Commission”) and several of its member states against the State of North Carolina. The U.S. Solicitor General also filed an Amicus Brief, dated July 2009, to address specific questions presented by the case.

The action, which seeks the enforcement of sanctions against the state for its alleged failure to develop a regional low-level radioactive waste disposal facility, was filed via original jurisdiction before the U.S. Supreme Court on June 3, 2002. (See *LLW Notes*, May/June 2002, pp. 1, 11.) The Court appointed a Special Master to review the case and make recommendations. The Special Master recently submitted a second report, with exceptions thereto being filed by the parties, for the Court’s consideration. (See *LLW Notes*, May/June 2009, pp. 25.)

**The Compacts’ Amicus Brief**

The compacts’ brief—which supports the plaintiffs’ position and encourages the Court to order the enforcement of sanctions imposed by the Southeast Compact or, in the alternative, the payment of restitution by North Carolina—puts forth the following arguments:

- (1) the low-level radioactive waste compact system was initiated by the states to

address a national crisis;

- (2) the problem of low-level radioactive waste disposal is on-going and the compact system is the only solution; and,
- (3) the low-level radioactive waste crisis can be solved only if member states are held accountable to the compacts to which they agreed.

***The Low-Level Radioactive Waste Compact System was Initiated by the States to Address a National Crisis***

The brief reviews the generation, uses and disposal needs of low-level radioactive waste, as well as the looming disposal crisis that led states to initiate the compact system via the National Governors’ Association. In this regard, the brief characterizes the Low-Level Radioactive Waste Policy Act of 1985 as a compromise between sited and non-sited states, which clarified state and federal responsibilities and reconfirmed the responsibility of each state, either by itself or in cooperation with other states, to provide disposal access for low-level radioactive waste. “The integrity of this compromise,” states the brief, “rests on states being held accountable for the responsibilities to each other that they voluntarily assumed by entering into interstate compacts.”

In his second report, the Special Master concluded that the Southeast Compact was drafted “to maximize the participating State’s ability to extricate themselves from the arrangement if they had the misfortune of being chosen as the host State.” The compacts’ brief disputes this characterization, however, as contrary to the history and structure of the low-level radioactive waste compact system and the language of the Southeast Compact itself. In this regard, the brief states as follows:

The compromise solution between the sited and non-sited states was completely conditioned upon the right of the sited-states, including South Carolina, to control the waste coming into their borders. South

Carolina never would have negotiated and agreed to a compact that conferred on the other states the benefit of being able to dispose of their waste at Barnwell while avoiding the burdens of hosting a disposal facility. Moreover, every member state of the Southeast Compact knew and agreed that South Carolina would not continue to be the host state. The Southeast Compact clearly states that “in no event shall this [Barnwell] disposal facility serve as a regional facility beyond December 31, 1992.” There is no rational basis to believe that South Carolina would have agreed to a compact that was drafted to allow participating states to back out of host state responsibilities thereby placing South Carolina in the exact same position that the low-level waste compromise was intended to avoid.

The compacts’ brief also takes issue with the Special Master’s comparison of the language of the Southeast Compact to other such compacts to determine whether the plaintiffs’ claims have merit. Such an approach is without merit, argues the brief, in a system initiated by the states rather than the federal government. The brief also points out that the interests of the states comprising the Southeast Compact were completely different from those of states in compacts without a disposal facility. “How one group of states chose to hold its members to their promises has no bearing on an agreement negotiated by another group of states,” argues the brief.

### ***The Problem of Low-Level Radioactive Waste Disposal is On-Going and the Compact System is the Only Solution***

While noting that Congressional consent to interstate compacts and their attendant exclusionary powers avoided a national crisis, the compacts’ brief asserts that low-level radioactive waste disposal continues to be a vexing problem throughout the country. In this regard, the brief

reviews the status of existing and planned waste disposal facilities and the limited disposal access that is currently available for Class B and C low-level radioactive waste. The brief also points out political and other hurdles to the development of new disposal facilities, as well as strong public opposition that has resulted in limitations on existing disposal sites.

Nonetheless, the brief contends that the compact system has generally provided disposal access over the years and will facilitate future solutions. In this regard, the brief states as follows:

Over the nearly three decades since the passage of the 1980 Act, the compact system has generally provided for the disposal of low-level radioactive waste generated within the United States. While thirty-six states currently do not have access for disposal of Class B and C low-level radioactive waste, it is the compact system that will facilitate solutions to this problem. The compact system allows for agreements among compacts to address disposal needs, and only through the compact system will new facilities be developed. In the current political climate, no state will license or accept a new low-level radioactive waste disposal facility without the authority to control the waste stream because no state appears to be willing to become the dumping ground for the world’s low-level radioactive waste. The delicate balance inherent in the compact system hinges on the understanding among states that compacting states will be held to their promises.

### ***The Low-Level Radioactive Waste Crisis Can Be Solved Only if Member States are Held Accountable to the Compacts to Which They Agreed***

The brief argues that, “in exchange for granting compacting states the authority to exclude low-

level radioactive waste generated outside their compact boundaries, Congress intended, and Congressionally-ratified compacts require, states to accept responsibility for disposal of low-level radioactive waste generated within their borders.” States were fully aware of this responsibility when they negotiated and entered into compacts, asserts the brief, and they should be held accountable therefore.

In this regard, the brief states as follows:

When a compact state, such as North Carolina, feels free to disregard its obligations to other compact states, the very foundation of the compact system is eroded. Any interpretation of a low-level radioactive waste compact that would allow a state to accept the benefits and none of the burdens of the compact system is contrary to the obligations imposed on the states by Congress to “be responsible for providing, either by itself or in cooperation with other States, for the disposal of ... [non-federal] low-level radioactive waste generated within the State ...” Moreover, it is patently unfair to those states that have shouldered the burden for providing low-level radioactive waste disposal options for their generators to allow a state in breach of compact requirements to escape scot free. States must be held accountable whenever they fail to honor their mutual obligations set forth in interstate compacts, especially where they are the essential ingredient to a state-initiated solution to the low-level waste disposal crisis. (citation omitted)

### **The Solicitor General’s Brief**

The U.S. Solicitor General also filed an Amicus Brief in July. The government decided to maintain its previous positions in response to the Special Master’s preliminary report and to not take a position on the second report. Instead, the

brief only addresses the following limited questions:

- (1) Whether sovereign immunity principles require the dismissal of the Southeast Compact Commission as a plaintiff?
- (2) Whether the Southeast Compact authorizes the Commission to impose monetary sanctions against North Carolina in response to the state’s alleged breach of its obligations under the compact?

As such, the government does not address any of the breach arguments included in the Special Master’s second report, but instead simply argues once again that the Commission should be allowed to remain as a party to the action and that the Southeast Compact does not authorize the Commission to impose monetary sanctions.

*Persons interested in more detail on the government’s position are directed to the Solicitor General’s Amicus Brief and/or to past LLW Forum news articles on this topic.*

### **Background**

In September 1986, pursuant to the Southeast Compact, North Carolina was selected as the host state for the compact region. Shortly thereafter, North Carolina made a request to the Commission for financial assistance. In response, the Commission, on behalf of the party States, began providing funds to North Carolina in 1988 to assist with the development of a facility.

Over the next eleven years, the party States, via the Commission, provided approximately \$80 Million to North Carolina in an effort to move siting and licensing to completion. North Carolina, however, did not site or license a facility, and in 1997, ceased all activity.

In response, the Commission found North Carolina in breach of the Southeast Compact and imposed sanctions on North Carolina in the

amount of approximately \$80 million. In the interim, North Carolina took action to withdraw from the Compact. Ultimately, the state refused to comply with the sanctions.

In June 2002, the Southeast Compact Commission and four member states filed a Complaint in the U.S. Supreme Court seeking, among other things, to enforce the sanctions order. (See *LLW Notes*, May/June 2002, pp. 1, 11.) The Supreme Court accepted the case and assigned it to a Special Master for his review and recommendations to the Court as to how the matter should be resolved.

In June 2006, the Special Master found that the Southeast Compact did not authorize the Commission to impose monetary sanctions against member States and additionally that the Commission could not impose sanctions because North Carolina withdrew from the Compact prior to the sanctions determination. The Special Master found, however, that further proceedings were necessary to determine whether North Carolina breached its obligations under the Compact.

The parties engaged in discovery and then filed additional motions with the Special Master. Plaintiffs argued that North Carolina breached the Southeast Compact when it ceased performance and that they are therefore entitled to restitution of the \$80 million that the states provided to North Carolina in reliance on the Southeast Compact, plus interest. North Carolina disagreed.

The Special Master found that North Carolina did not breach the Compact and that North Carolina's withdrawal did not violate its implied covenant of good faith and fair dealing.

### **Next Steps**

Exceptions to the Special Master's findings and other related filings are expected to be submitted to the Court during the summer.

The Supreme Court will then review the Special

Master's findings, as well as any exceptions and other pleadings that are submitted, and can either accept or reject them.

The Court is expected to hear the case in the fall of 2009.

It is anticipated that a final decision in the case will be issued no later than June of 2010.

*For additional information, please contact Kathryn Haynes or Ted Buckner of the Southeast Compact Commission at (919) 821-0500 or at [khaynes@secompact.org](mailto:khaynes@secompact.org) or at [tedb@secompact.org](mailto:tedb@secompact.org).*

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

## **Defendants to Appeal Ruling re NW Compact Authority Over Clive**

On June 23, 2009, the State of Utah filed notice that it will appeal the district court's recent ruling in a lawsuit challenging the Northwest Compact's authority to govern EnergySolution's low-level radioactive disposal site in Clive, Utah. On June 18, the Rocky Mountain Low-Level Radioactive Waste Board also voted to appeal the district court's ruling. The Northwest Interstate Compact on Low-Level Radioactive Waste Management, which was the original defendant to the action, announced earlier in June that it too plans to file an appeal.

EnergySolutions initiated the lawsuit after the company filed an application with the U.S. Nuclear Regulatory Commission to import up to 20,000 tons of potentially radioactively contaminated material from Italy and to export for return to generators in Italy any of the imported

waste that can not be recycled or does not meet the Clive facility's waste acceptance criteria for disposal. (See *LLW Notes*, November/December 2007, pp. 6-9.) The Northwest Compact maintained that its current resolution and order authorizing *EnergySolutions'* Clive facility to dispose of low-level radioactive waste from other compacts and unaffiliated states did not apply to foreign waste.

### **The Complaint**

*EnergySolutions*—operator of the Clive facility in Utah—initiated the lawsuit in the U.S. District Court for the District of Utah, Central Division, on May 5, 2008. (See *LLW Notes*, May/June 2008, pp. 25-28.) Although the action was initially filed against the Northwest Compact and its Executive Director, Michael Garner, solely in his official capacity, the court subsequently granted unopposed motions by the State of Utah and the Rocky Mountain Compact to intervene in the action as defendants. (See *LLW Notes*, September/October 2008, pp. 12-14.)

Among other things, *EnergySolutions* argues that (1) the Clive facility is not a “regional disposal facility” as defined by the LLRWPA and the Northwest Compact therefore lacks authority to restrict the flow of LLRW to the facility; (2) NRC's authority and responsibility for the regulation of the export and import of byproducts and nuclear materials preempt any attempt by the Northwest Compact to restrict or prevent the importation of foreign waste to the Clive facility; and, (3) any effort by the Northwest Compact to restrict or prohibit the Clive facility from receiving foreign LLRW would amount to unauthorized discrimination against foreign commerce and would be prohibited by the dormant Commerce Clause of the U.S. Constitution.

### **The Response**

The Northwest Compact challenges *EnergySolutions'* positions and contends that the

Northwest Compact itself provides the legal basis to restrict disposal at the Clive facility; (2) the Northwest Compact Committee derives its exclusionary authority from the Compact itself, not from the Low-Level Radioactive Waste Policy Amendments Act of 1985; (3) the Northwest Compact Committee is authorized under Articles IV and V of the Compact to limit the access for out-of-region waste to the Clive facility; and, (4) the Clive facility qualifies as a “regional disposal facility” under the 1985 act. (See *LLW Notes*, November/December 2008, pp. 13-18.)

### **District Court Ruling**

On May 15, 2009, the district court issued a ruling on the parties' various motions for summary judgment on the first count of the lawsuit. (See *LLW Notes*, May/June 2009, pp. 1, 20-25.) In short, the court ruled that, with regard to the importation of low-level radioactive waste from outside of the compact region, the Northwest Compact does not have the authority to restrict access to the Clive disposal facility. The court based this ruling on its finding that Clive is a private facility operating in interstate commerce that is not covered by the compact system—i.e., it is not a “regional disposal facility” as defined under federal law.

The court further ruled, however, that the Northwest Compact has authority to regulate the disposal of low-level radioactive waste that is generated within the compact's regional boundaries—including restricting disposal access for such waste to the Clive facility.

Finally, the court's ruling maintains the authority of the Northwest Compact to regulate the Richland facility operated by US Ecology—regardless of the origin of waste that is sent thereto.

### **Final Judgment**

On June 17, 2009, the district court granted *EnergySolutions'* unopposed Motion for Entry of

Judgment on Count I under Rule 54(b) and to Stay Proceedings on Counts II and III in a lawsuit challenging the Northwest Compact's authority to govern the company's low-level radioactive disposal site in Clive, Utah. (See *LLW Notes*, May/June 2009, pp. 1, 20-25.)

In granting *EnergySolutions'* motion, the court noted that the defendants did not oppose the motion and that there appears to be good cause for so doing. In this regard, the court stated as follows:

[T]he Court finds that there is no reason to delay entry of final judgment on Count I because the summary judgment order—which concludes that the Northwest Compact has authority to regulate the disposal of waste generated within the regional boundaries of the Northwest Compact, but has no authority to restrict the Clive Facility's receipt of waste generated outside the compact region, regardless of whether the waste in question was generated in the United States—renders unnecessary the relief sought by Plaintiff in Counts II and III. If, as the Court has already concluded, the Compact has no authority to restrict the Clive Facility's receipt of waste generated outside the Compact region, then the Compact lacks authority to restrict the Clive Facility's receipt of waste generated outside the United States. It necessarily follows that (unless or until the Court's ruling on Count I is reversed on appeal) there is no reason for the Court to address the merits of Counts II and III, given that both of those counts challenge the Compact's authority to restrict the Clive Facility's receipt of foreign-generated waste.

*For additional information, please contact Michael Garner, Executive Director of the Northwest Compact, at (360) 407-7102; Bill Sinclair, Deputy Director of the Utah Department*

*of Environmental Quality, at (801) 536-4405; Leonard Slosky, Executive Director of the Rocky Mountain Compact, at (303) 825-1912; or Mark Walker of EnergySolutions, at (801) 231-9194.*

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### ***Waste Control Specialists LLC v. Save the Ogallala Aquifer***

## **WCS Files Suit re “False and Disparaging” Statements**

In early July 2009, Waste Control Specialists LLC filed a lawsuit against Adam Greenwood and Save the Ogallala Aquifer in the 109<sup>th</sup> District Court in Andrews County, Texas. According to the complaint, Greenwood—who resides in New Mexico, but engages in business in the State of Texas—is the President/Person in Charge of Save the Ogallala Aquifer.

In its complaint, WCS alleges that Greenwood has traveled throughout the State of Texas making false and disparaging statements about WCS and its operations in Andrews County. WCS further alleges that the defendants maintain a web site that publishes false and disparaging information about the plaintiff and that the defendants have made false and disparaging statements to various television news reporters that have been broadcast and republished throughout Texas. Such activities, according to WCS, have caused the plaintiff damages for which it seeks recovery.

WCS cites the following as examples of the defendants' alleged misconduct:

- ◆ On the defendants' web site at [www.savetheogallalaaquifer.com](http://www.savetheogallalaaquifer.com), the defendants state as follows: “One of the largest aquifers in the country is now

threatened. The Ogallala Aquifer sits directly underneath the radioactive waste dump in Andrews County, Texas. This puts the primary source of drinking and agricultural water for eight states at significant risk.”

- ◆ On or about June 22 through 24, 2009, the defendants were interviewed by news stations from Midland, Odessa and Lubbock on three separate occasions, during which they repeated that the Ogallala Aquifer is situated directly beneath WCS’ property and that WCS’ operations threatens the drinking water for millions of Americans in eight states.

WCS asserts that decades of extensive geologic research has conclusively shown that its property does not sit atop the Ogallala Aquifer.

“Independent hydro-geologic research and analysis has verified that Plaintiff’s property is several miles away from and downgradient from the southern edge of the Ogallala Aquifer,” writes WCS, “and poses absolutely no threat to any drinking water supply.”

WCS is requesting a trial by jury and a judgment awarding it for damages, costs of suit, pre- and post-judgment interest, and/or such other and further relief, both at law and equity, to which it may be justly entitled.

In a statement, Greenwood said his organization is not making false claims, but rather just raising questions. “WCS cannot sue its way out of answering these and other questions about water quality,” Greenwood was quoted in a local news article. “And the need for certain answers is all the more pressing considering WCS is not required to make a long-term commitment to the safety of the dump. If the dump is contaminated, the responsibility ultimately would fall back on Texas taxpayers.”



## *U.S. Congress*

### **Annual Security Inspection Report Sent to Congress**

In July 2009, the U.S. Nuclear Regulatory Commission made available to the public an unclassified version of an annual report to Congress outlining the previous year's security inspection program. The Energy Policy Act of 2005 requires NRC to prepare and deliver the report to Congress. It covers the agency's security inspection program, including force-on-force exercises, for commercial nuclear power reactors and certain nuclear fuel cycle facilities for calendar year 2008.

"It is my pleasure to submit this report to our congressional oversight committees," said NRC Chair Gregory Jaczko. "At the NRC we take our mission to protect public health and safety very seriously, and we want to share our efforts with the public as much as possible."

The report finds that NRC conducted 182 security inspections at nuclear power plants and Category I fuel cycle facilities with spent nuclear material in 2008. Twenty-four of these inspections were force-on-force, which use a well-trained mock adversary force to test a facility's ability to respond to threats.

A total of 133 findings were identified by the security inspections, of which 125 were of very low security significance and eight were of low-to-moderate security significance. All were corrected immediately or compensatory measures put into place, if necessary. Specific details of the findings were not released to the public, as they are considered sensitive.

Also included in the report is information on programmatic improvements made as a result of a videotape of sleeping security officers at the Peach Bottom nuclear power plant in

Pennsylvania, a discussion of corrective actions taken after some force-on-force inspections, and the primary objectives of the Category 1 security oversight program.

*A public version of the annual report can be found on the NRC Web site at <http://www.nrc.gov/reading-rm/doc-collections/congress-docs/correspondence/2009/boxer-06-30-2009.pdf>.*

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

### **ACRS Holds July 2009 Meeting *Invites Nominations***

The U.S. Nuclear Regulatory Commission's Advisory Committee on Reactor Safeguards (ACRS) met on July 8-10, 2009 at the agency's headquarters in Rockville, Maryland. The ACRS—which advises the Commission, independently from NRC staff, on safety issues related to the licensing and operation of nuclear power plants and in areas of health physics and radiation protection—is seeking qualified candidates for appointment to the committee.

#### **July Meeting**

The July meeting agenda included, among other things, the license renewal application and associated final safety evaluation report for the Beaver Valley Power Station; guidance for closure of inspections, tests, analyses and acceptance criteria under NRC regulations for new reactors; applicability of the TRACE Code to analyze the stability of the Economic Simplified Boiling-Water Reactor design; and regulatory guidance for seismic qualification of electrical and mechanical equipment for nuclear power plants.

*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/2009/>. For additional information on ACRS meetings, please contact Antonio Dias at (301) 415-6805.*

#### **Nominations**

NRC is seeking qualified candidates for appointment to the ACRS. The current 15-member committee includes individuals who possess specific technical expertise along with a

broad perspective in addressing nuclear safety concerns. For the new position, the Commission is seeking an individual with technical expertise in the area of nuclear engineering. In particular, the candidate must have at least 10 years of broad experience in nuclear engineering coupled with operational experience relative to new reactor design. Committee members serve a four-year term with the possibility of two reappointments for a total service of 12 years.

*Interested candidates may submit resumes until September 30, 2009. Resumes should be sent to Janet Riner, ACRS, Mail Stop T2E-26, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001 or e-mailed to [JML1@nrc.gov](mailto:JML1@nrc.gov).*

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

### **HLW Contention Appeals Acted Upon**

On June 30, 2009, the U.S. Nuclear Regulatory Commission voted 4 to 0 to uphold the decisions of three Construction Authorization Boards (CABs) conducting a hearing on the U.S. Department of Energy's application to build and operate a high-level radioactive waste repository at Yucca Mountain, Nevada. The decision includes several rulings, including a rejection of most of the NRC staff's appeal of several admitted contentions, or arguments, as well as the rejection of two Nevada contentions challenging DOE's managerial competence and institutional integrity.

DOE submitted the 8,600-page application for the proposed Yucca Mountain facility on June 3, 2008. (See *LLW Notes*, May/June 2008, pp. 35-36.) Shortly thereafter, on September 9, 2008, NRC staff determined that the application contained sufficient technical information for the agency to docket it and initiate its comprehensive

## Federal Agencies and Committees *continued*

safety review. In October 2008, NRC announced an opportunity to participate in a hearing. (See *LLW Notes*, September/October 2008, pp. 16-17.) The Atomic Safety and Licensing Board (ASLB) Panel then created three CABs to examine the 317 contentions filed by 12 petitioners, including the states of Nevada and California, the Nuclear Energy Institute, the Timbisha Shoshone Tribe and other parties. (See *LLW Notes*, January/February 2009, pp. 18-19.)

*The Yucca Mountain application, minus some classified information, may be found on the NRC's Web site at <http://www.nrc.gov/waste/hlw-disposal/yucca-lic-app.html>.*

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### ***U.S. Nuclear Regulatory Commission***

*(Continued from page 1)*

significant quantities of depleted uranium.” The agency then plans to consider these shared viewpoints as it develops a technical basis for the planned rulemaking.

The number of participants around the table will be limited. In selecting the participants, NRC will attempt to ensure broad participation by the full spectrum of affected interests including citizen and environmental groups; nuclear industry representatives; state, tribal and local government officials; and, experts from academia and other federal agencies. Those not seated at the tables, including members of the public, will have an opportunity to provide comment and feedback on each of the discussion items.

Questions regarding participation in the roundtable discussions should be submitted to the facilitator, Francis Cameron, by mail to Mail Stop O16-E15, U.S. Nuclear Regulatory Commission, Washington, DC 20555-001, by telephone at (301) 415-1006 or (240) 205-2091, or via e-mail at [francis.cameron@nrc.gov](mailto:francis.cameron@nrc.gov).

### **Identified Issues**

In the *Federal Register* notice, NRC identifies the following issues that should be considered before commencing regulatory activities:

- ◆ definition of unique waste streams and significant quantities,
- ◆ time period of performance,
- ◆ exposure scenarios for a site specific analysis,
- ◆ source term issues for a site-specific analysis,
- ◆ modeling of uranium geochemistry in a site-specific analysis, and
- ◆ modeling of radon in the environment in a site-specific analysis.

For each issue, NRC has included a list of questions and factors for consideration. (Interested stakeholders are directed to the *Federal Register* notice for more information.)

NRC states that the above list is not meant to be comprehensive or final, but is instead intended to initiate discussion. Interested stakeholders are invited to recommend additions, deletions, or modifications to the list.

### **Comments**

Comments on issues for the workshop agendas should be postmarked no later than August 1, 2009. Comments on issues and questions presented in the *Federal Register* notice and discussed at the workshops should be postmarked no later than October 30, 2009.

Information concerning how and where to submit comments can be found in the *Federal Register* notice.

### **Background**

A review of the classification of large quantities of depleted uranium was designated as one of seven high-priority tasks by NRC staff in their October 2007 strategic assessment of the agency's

## Federal Agencies and Committees *continued*

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

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

In December 2009, NRC made public a paper (SECY-08-0147) providing staff analysis and recommendations regarding the disposal of large quantities of depleted uranium. (See *LLW Notes*, November/December 2009, pp. 1, 27-30.) The technical analysis evaluated whether amendments

should be made to section 61.55(a) in order to assure that large quantities of depleted uranium are disposed of in a manner that meets the performance objectives in Subpart C of 10 CFR Part 61. Staff concluded that although near-surface disposal of large quantities of depleted uranium may be appropriate in some circumstances, it may not be appropriate under all site conditions. Due to the unique characteristics of depleted uranium, staff concluded that existing regulations should be amended in order to ensure the safe disposal of large quantities of this particular waste.

Staff considered and evaluated four options to facilitate the safe disposal of depleted uranium. The options, as well as a summary of the perceived benefits and drawbacks for each, are presented in the staff paper. The paper contains the staff's recommendation to conduct "a limited rulemaking to revise Part 61 to specify the need for a disposal facility licensee or applicant to conduct a site-specific analysis that addresses the unique characteristics of the waste and the additional considerations required for its disposal prior to disposal of large quantities of depleted uranium and other unique waste streams such as reprocessing waste." Staff further recommends that (1) the technical requirements associated with the disposal of large quantities of depleted uranium be developed through the rulemaking process and that (2) specific parameters and assumptions for conducting site-specific analysis be incorporated into a guidance document subject to public comment.

*For additional information, please contact Priya Yadav at (301) 415-6667 or [priya.yadav@nrc.gov](mailto:priya.yadav@nrc.gov) or Christopher Grossman at (301) 415-7658 or [christopher.grossman@nrc.gov](mailto:christopher.grossman@nrc.gov). Both Yadav and Grossman are with NRC's Office of Federal and State Materials and Environmental Management Programs.*

## Final GEIS Issued re Uranium Recovery Operations

Earlier this summer, the U.S. Nuclear Regulatory Commission published its final Generic Environmental Impact Statement (GEIS) for in situ leach uranium recovery (ISR) operations in the Western United States. In so doing, the agency announced a change in its approach for environmental reviews of new ISR facilities. Specifically, the agency will issue full Supplemental Environmental Impact Statements (SEIS) for new recovery operations, instead of Environmental Assessments as originally planned.

The new approach responds to public concerns about the need to assess the unique characteristics of each individual site. Under the National Environmental Policy Act (NEPA), an EIS is the most thorough review of potential impacts of a proposed licensing action on the environment. It involves extensive opportunities for public participation, with a draft report issued for public comment before the preparation of a final report.

NRC will continue to prepare Environmental Assessments for applications to expand or renew the licenses of existing uranium recovery operations. An Environmental Assessment typically is not issued for public comment. Nonetheless, the agency may issue an assessment for comment if a particular application has high public interest. A “finding of no significant impact” ends the environmental review. However, work on an SEIS for the site would begin if the assessment does identify significant impacts.

NRC expects approximately 17 license applications for ISR milling facilities through 2010—including new facilities, expansions and restarts. The GEIS will improve the efficiency of the agency’s environmental reviews of these applications by serving as a starting point for site-specific environmental reviews of these

applications. Subject to available resources, most license reviews are expected to be completed within two years.

The GEIS categorizes as “small,” “moderate” or “large” various impacts of ISR operations on land use, transportation, surface water and groundwater, geology and soils, threatened and endangered species, historical and cultural resources, public health and safety, ecology and air quality. It also examines the socioeconomic impacts and waste management issues of ISR facilities. Since the precise impacts can only be determined during the site-specific reviews of each application, many of these impacts are expressed as a range.

NRC published the draft GEIS in July 2008. Staff held several public meetings in South Dakota, Nebraska, Wyoming and New Mexico to discuss the development of the report and to accept public comment on the draft GEIS.

*The final “Generic Environmental Impact Statement on In Situ Leach Uranium Milling Facilities,” NUREG-1910, can be found on NRC’s Web site at <http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1910/>.*

## NRC to Host Public Meeting re Impact of Lack of Waste Disposal Access on Hospitals and Universities

On August 7, 2009, the U.S. Nuclear Regulatory Commission published a Request for Information on Low-Level Radioactive Waste Disposal and Notice of Public Meeting (74 *Federal Register*).

According to the posting, NRC plans to host a public meeting in October to gather information to assess the impacts of a lack of disposal access

## Federal Agencies and Committees *continued*

for low-level radioactive waste on persons using radioactive sources or materials in conducting research, such as hospitals and universities.

The *Federal Register* notice states that the purpose of the information gathering is “to identify important research that has been impacted and/or stopped because of a lack of disposal options for radioactive sources or materials.”

Information gathered at the meeting will be provided to the Commission to inform future Commission decision-making.

### Logistics

The public information-gathering meeting will be held at the agency’s headquarters on the morning of October 7, 2009. Due to anticipated high-interest, NRC plans to Web cast the meeting.

*For additional information on the Web cast, please check the NRC public Web site at <http://www.nrc.gov/public-involve/public-meetings/index> in late-September for the meeting and Web cast details.*

### Comments

NRC is inviting the public to provide information and comments until October 20, 2009. Comments submitted by mail should be postmarked by that date in order to ensure consideration. Comments received after that date will be considered to the extent practical.

When submitting comments, please include Docket ID NRC-2009-0346 in the subject line. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site at [www.regulations.gov](http://www.regulations.gov). NRC cautions that the comments will not be edited to remove any identifying or contact information and therefore persons submitting comments should not include any information that they do not want to be publicly disclosed.

Comments may be submitted by any of the following methods:

- ◆ *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for documents filed under Docket ID NRC-2009-0346. Questions about NRC dockets should be addressed to Carol Gallagher at (301) 492-3668 or at [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov).
- ◆ *Mailing of Comments:* Comments may be mailed to Michael T. Lesar, Chief, Rulemaking and Directives Branch (RDB), Division of Administrative Services, Office of Administration, Mail Stop: TWB-05-B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.
- ◆ *Faxing of Comments:* Comments may be faxed to RDB at (301) 492-3446.

### Questions

In the *Federal Register* notice, NRC staff requests that persons submitting comments consider and address the following 13 questions:

1. *Are you involved in research involving the use of radioactive sources or materials, and if so, in what specific area (medical, academic, medical administration, etc.)?*
2. *If you answered yes to question no. 1, please describe the research procedure(s) that is performed, or was performed prior to disposal access limitations.*
3. *Have alternative technologies taken the place of radioactive materials because of LLW disposal access, and if so, what have been the impacts, both positive and negative?*
4. *In what State and LLW Compact is the research facility that you’re addressing located?*
5. *What kind of licensee uses the radioactive sources or materials that are being addressed (university, hospital, private research, other)?*

## Federal Agencies and Committees *continued*

6. *How do you or did you disposition the spent sources or radioactive materials?*
  - a. *LLW disposal facility*
  - b. *Store onsite*
  - c. *Return to manufacturer*
  - d. *Other, explain.*
7. *Have you historically disposed of spent sources or radioactive materials at a low-level waste disposal facility?*
8. *If your answer to question no. 7 was yes, has your research been affected by the lack of access to a low-level waste disposal facility for either spent radioactive sources or radioactive materials? If so, please explain.*
9. *Are you currently storing onsite radioactive sources or materials that would have been disposed of offsite had disposal access been available?*
10. *Has the lack of disposal access for either radioactive sources or materials caused you to re-evaluate research needs and techniques?*
11. *What adaptations have you made to reduce waste volume and improve the management of low-level radioactive waste disposal?*
  - e. *Increased onsite storage capacity*
  - f. *Increased use of nonradioactive sources*
  - g. *Limit number of authorized users*
  - h. *Reduce volume of waste shipped*
12. *Has the cost of low-level radioactive waste disposal affected your research? If so, describe how.*
13. *Provide any additional comments.*

### **Background**

At the request of the Commissioners, the NRC hosted a briefing on low-level radioactive waste management and disposal and related issues on April 17, 2009. (See *LLW Notes*, March/April 2009, pp. 1, 30-36.) The briefing—which was announced in 74 *Federal Register* 12,401 (March 24, 2009)—included presentations by a variety of speakers and was open to the general public for

observation. A representative from the Low-Level Radioactive Waste Forum participated in the briefing, at the invitation of NRC Commissioners.

The briefing was divided into two parts. In the morning, from 9:30 a.m. to 11:30 a.m., NRC staff provided presentations on a broad range of low-level radioactive waste issues. In addition, representatives from the U.S. Department of Energy's (DOE) Office of Environmental Management and the National Nuclear Safety Administration (NNSA) gave presentations. The afternoon session went from 1:30 p.m. to 3:30 p.m. and included a state regulators panel (TCEQ, LLW Forum, OAS and CRCPD) and a waste generators/other stakeholder's panel (NEI, CRSO, CORAR, NIRS). A Commission question and answer session followed each panel.

During the course of the briefing, some presenters stated that cost-effective waste disposal options are needed for the use of radioactive material in nuclear medicine biomedical research and that key radionuclide research projects are no longer available due to high disposal costs. After the briefing, the Commission directed NRC staff to work with stakeholders to develop a list or catalog of important research that has been impacted and/or stopped due to a lack of disposal options. Staff decided to expand its inquiry to include the use of other radioactive material as well.

*For additional information, please contact James Shaffner, Project Manager, Low-Level Waste Branch, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Rockville, MD 20852. Shaffner may also be contacted via telephone at (301) 415-5496; fax at (301) 415-5369; or e-mail at [James.Shaffner@nrc.gov](mailto:James.Shaffner@nrc.gov).*

## Application Considered for Medical Isotope Production System

On July 8, 2009, the U.S. Nuclear Regulatory Commission conducted a public meeting at the agency's headquarters in Rockville, Maryland to discuss a potential application from Babcock and Wilcox (B&W) for a medical isotope production system. During the course of the meeting, NRC staff and B&W officials discussed possible methods for licensing the proposed facility, as well as the types of information that would be required in the application.

"We're aware of the global long-term medical isotope supply situation, and we're prepared to promptly review an isotope reactor and production facility application with the goal of ensuring public health and safety," said Timothy McGinty, Director of Policy and Rulemaking in the NRC's Office of Nuclear Reactor Regulation. "This meeting will help us and B&W clarify the issues involved in domestic medical isotope production."

*For additional information, please contact Geoffrey Wertz at (434) 326-1086 or [geoffrey.wertz@nrc.gov](mailto:geoffrey.wertz@nrc.gov) or Linh Tran at (301) 415-4103 or [linh.tran@nrc.gov](mailto:linh.tran@nrc.gov).*

## Amendments Proposed to Import and Export Regulations

On June 23, 2009, the U.S. Nuclear Regulatory Commission published (74 *Federal Register* 29,614) a proposed rule to amend the agency's regulations that govern the export and import of nuclear equipment and material. According to the notice, "In addition to updating, clarifying and correcting several provisions, this proposed rule would allow Category 1 and 2 quantities of

materials listed in the Commission's regulations to be imported under a general license." The proposed rule would also "revise the definition of 'radioactive waste' and remove the definition of 'incidental radioactive material.'"

### Background and Discussion

NRC is proposing to amend its regulations for the export and import of nuclear equipment and material as contained in 10 CFR Part 110, "Export and Import of Nuclear Equipment and Material."

The proposed rule would update, clarify and correct several provisions in 10 CFR Part 110 to improve NRC's regulatory framework for the export and import of nuclear equipment, material, and radioactive waste. It would also clarify and correct the regulations addressing the general license for the export of byproduct material.

Changes are also proposed to the regulations governing the export and import of Category 1 and Category 2 quantities of radioactive materials listed in Appendix P to 10 CFR Part 110 and to the definition of "radioactive waste" contained in 10 CFR Part 110.

*Persons interested in specific details of the proposed changes are directed to the Federal Register notice themselves.*

### Comments

The comment period for the proposed rule ends on September 8, 2009. Comments received after this date cannot be assured consideration.

Please note that all comments will be made available to the public in their entirety. Personal information—such as name, address, telephone number, e-mail address, etc.—will not be removed.

Comments may be submitted via the Federal e-Rulemaking Portal at <http://www.regulations.gov> by searching for documents filed under Docket ID



[NRC-2008-0567]. Comments may also be e-mailed to [Rulemaking.Comments@nrc.gov](mailto:Rulemaking.Comments@nrc.gov), faxed to (301) 415-1101, or mailed to the agency's headquarters in Rockville, Maryland. When submitting comments, please include the number RIN 3150-AI16 in the subject line.

*For additional information, please contact Brooke Smith, International Policy Analyst, Office of International Programs, U.S. Nuclear Regulatory Commission, MS-04E21, Washington, DC 20555-0001; telephone at (301) 415-2347; or e-mail at [brooke.smith@nrc.gov](mailto:brooke.smith@nrc.gov).*

### **NRC Split re Expansion of Source Tracking System**

In late June 2009, Commissioners of the U.S. Nuclear Regulatory Commission were split 2 to 2 when taking a vote on the staff's recommendation to issue a final rule expanding the number and type of radioactive sources covered under the National Source Tracking System (NSTS). As a result of the split vote, the Commission did not approve expansion of the system at this time.

Under the proposal, the NSTS would have been expanded to include Category 3 sources, requiring additional licensees to report information on the manufacture, transfer, receipt, disassembly and disposal of these radioactive sources to the NSTS. These sources include fixed industrial gauges (level gauges, conveyor gauges, thickness gauges, blast furnace gauges, dredger gauges, and pipe gauges); well-logging devices; medium and low-dose-range brachytherapy; and certain radiography devices.

As established in a final rule published in November 2006, the current NSTS tracks radioactive sources in Categories 1 and 2 as determined by the International Atomic Energy

Agency. (See *LLW Notes*, January/February 2009, p. 21.) The rule requires reporting of certain inventory and transfer information to the NSTS. The NRC considers these sources to be the most significant from a security perspective. These sources are typically used in radiothermal generators, irradiators, radiation therapy, industrial gamma radiography and high- and medium-dose-range brachytherapy cancer treatments. That rule covers approximately 1,350 licensees nationwide who possess Category 1 and 2 sources. The current NSTS was launched in December 2008 and licensees have been reporting their information into the system since January 2009.

*Additional details on the proposed expansion of the NSTS can be found at <http://www.nrc.gov/reading-rm/doc-collections/commission/secys/2009/>. Additional details on the Commission vote can be found at <http://www.nrc.gov/reading-rm/doc-collections/commission/combined/2009/>.*

### **Remarks of NRC Chairman Jaczko to the National Academies**

On July 8, 2009, U.S. Nuclear Regulatory Commission Chairman Gregory Jaczko delivered prepared remarks to the Nuclear and Radiation Studies Board of the National Academies in Washington, DC.

Below are brief excerpts from the published remarks as they relate to low-level radioactive waste management and disposal.

*“Over the past few years, one of the issues under discussion has been the management and disposal of low-level waste. As I am sure you are aware, the closure of the Barnwell facility to out-of-*

*compact waste has resulted in a lack of disposal for most Class B and C wastes. Market forces may ultimately solve this national problem, but in the interim the NRC must stay on top of any potential effects that a lack of disposal options could have on our area of responsibility. And those impacts are broad—from impacts on operating reactors to impacts in the areas of decommissioning and clean-up of sites.”*

*“This will present challenging and interesting issues for the Commission. Blending, for example, is an issue that the Commission has dealt with before and will likely have to deal with again. Also, earlier this year, the Commission directed staff to do a limited rulemaking to address the issue of disposal of depleted uranium, and in the longer term, risk-inform the overall waste classification system in our regulations.”*

In his remarks, Chairman Jaczko touches upon various other regulatory issues including high-level waste management and disposal, the Waste Confidence rule, radiation protection and nuclear materials, source security and the National Source Tracking System, and applications for new reactors.

*Persons interested in the Chairman’s comments on these topics are directed to the published remarks themselves at [opa@nrc.gov](mailto:opa@nrc.gov) using S-09-018.*

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## Commissioner Lyons Honored by ANS

On June 16, 2009, Commissioner Peter Lyons of the U.S. Nuclear Regulatory Commission was honored with the American Nuclear Society (ANS) Fellow Award—the society’s highest membership grade award to nuclear professionals

who have significant accomplishments in the fields of nuclear science and engineering. The prestigious designation of ANS Fellow acknowledges the extraordinary leadership of nuclear professionals in different disciplines relating to research, invention, engineering, safety, technical leadership and teaching.

Lyons earned the award for his exceptional and diverse contributions to the advancement of nuclear science in the United States and around the world including, among other things, his instrumental role in helping to develop the Energy Policy Act of 2005 and his leadership at NRC in developing a stalwart research program that supports sound regulatory decisions. In addition, Lyons was recognized for his contributions to initiatives for maintaining a competent and dedicated workforce and for essential contributions toward furthering international collaboration.

Lyons nomination as an NRC Commissioner was confirmed by the U.S. Senate on May 26, 2006 and signed by the President on May 31, 2006. (His term expired on June 30, 2009.) Prior to his service at NRC, Lyons served as Science Advisor on the staff of U.S. Senator Pete Domenici and the Senate Committee on Energy and Natural Resources. From 1969 to 1996, Lyons worked at the Los Alamos National Laboratory serving as Director for Energy and Environment and as Deputy Associate Director for Defense Research and Applications.

*For additional information on the ANS Fellows Award, please go to <http://www.ans.org/honors/fellows/>.*

## NRC Proposes Revisions to License Renewal Regulations

In September and October 2009, the U.S. Nuclear Regulatory Commission plans to hold five public meetings to seek comments on proposed revisions to regulations and documents governing the renewal of licenses for operating nuclear power plants. The proposal includes updates and changes to the *Summary of Findings on National Environmental Policy Act (NEPA) Issues for License Renewal of Nuclear Power Plants* and the *Generic Environmental Impact Statement (GEIS) for License Renewal of Nuclear Plants*, NUREG-1437, which was originally published in 1996. The Commission has stated that it intends to review and update these documents and related regulations as necessary, utilizing a 10-year cycle.

During the past five years, NRC has conducted public scoping meetings and collected comments that were considered in the revised GEIS. In addition, the revision incorporates knowledge gained and lessons learned from previous license renewal reviews, as well as new information. As proposed, the revisions would redefine the number and scope of environmental impact issues that must be addressed in a nuclear power plant license renewal review.

The GEIS assesses the overall scope and impact of environmental effects associated with license renewal at any nuclear power plant site and it improves the efficiency of the license renewal process. Plant-specific supplements to the GEIS are prepared for each license renewal review. The NRC's environmental protection regulations stem from the National Environmental Policy Act (NEPA), which requires an environmental impact statement for major federal actions significantly affecting the quality of the human environment, such as renewing the license of a nuclear power plant.

Concurrent with the rulemaking and GEIS revision, NRC is publishing for public comment a revised Regulatory Guide 4.2, Supplement 1, *Preparation of Environmental Reports for License Renewal Applications*, and NUREG-1555, Supplement 1, *Standard Review Plans for Environmental Reviews for Nuclear Power Plants*.

Comments on the proposed rule, draft revised GEIS and associated documents are due no later than October 14, 2009. Comments may be submitted via the federal e-Rulemaking Portal at <http://www.regulations.gov> (docket identification NRC-2008-0608); via e-mail to [Rulemaking.Comments@nrc.gov](mailto:Rulemaking.Comments@nrc.gov); via facsimile at (301) 492-3466; or via regular mail to the Secretary of the NRC.

The documents may be obtained from NRC's Agencywide Documents Access and Management System (ADAMS) at <http://adamswebsearch.nrc.gov/dologin.htm> using accession numbers ML090220654 (draft revised GEIS); ML091620409 (draft Regulatory Guide 4.2, Supplement 1, Rev. 1); and, ML090230497 (Draft NUREG-1555, Supplement 1, Rev. 1).

*The October 1 meeting at NRC headquarters will be webstreamed to maximize the potential to include interested stakeholders via the agency's Web site at <http://www.nrc.gov/public-involve/public-meetings/webcast-live.html>. Transcripts from this and the other meetings will be posted to the agency's Web site at <http://www.nrc.gov/public-involve/doc-comment.html>.*

## License Renewals Continue to Move Forward

The U.S. Nuclear Regulatory Commission continues to process license renewal applications from various nuclear power plant operators. In that regard, the agency recently took the following actions:

- ◆ On August 14, 2009, NRC hosted a meeting to discuss the results of an inspection related of aging management programs related to a request to extend the operating license for the Crystal River Unit 3 Nuclear Generating Plant. The Crystal River plant's single pressurized-water reactor is located approximately seven miles northwest of Crystal River. The current operating license expires on December 3, 2016. The plant's owner, Progress Energy, submitted the license renewal application on December 18, 2008. If approved, the expiration date for Crystal River would be extended to December 3, 2036. *A copy of the Crystal River license renewal application is available at <http://www.nrc.gov/reactors/operating/licensing/renewal/applications/crystal-river.html>.*
- ◆ On June 30, 2009, NRC announced that staff has issued a final safety evaluation report (SER) for the proposed renewal of the operating license for the Three Mile Island Nuclear Station, Unit 1 (TMI-1)—which is located in Middletown, Pennsylvania. The report concluded that there are no open items that would preclude license renewal for an additional 20 years of operation. NRC's independent Advisory Committee on Reactor Safeguards (ACRS) will evaluate the SER and make its recommendation before the agency makes a final decision on renewal of the license. ACRS will hold a meeting on the issue on September 10 at the NRC's headquarters in Rockville, Maryland. Exelon Generation Group LLC submitted the Three Mile Island application to NRC on January 8, 2008. The current operating license for TMI-1 expires on April 19, 2014. *A copy of the SER can be found on ADAMS using accession number ML091660470 at <http://www.nrc.gov/reading-rm/adams.html>.*
- ◆ On June 26, 2009, NRC announced that staff has issued a SER for the proposed renewal of the operating licenses for the Beaver Valley Power Station, Units 1 and 2, and concluded that there are no open items that would preclude license renewal for an additional 20 years of operation. ACRS discussed the report at its July meeting and is currently evaluating the SER and preparing its recommendations to the Commission. Beaver Valley Units 1 and 2 are pressurized water reactors located about 17 miles west of McCandless, Pennsylvania. The current operating licenses expire on January 29, 2016 for Unit 1 and May 27, 2027 for Unit 2. Beaver Valley's operator, First Energy Nuclear Operating Company, submitted the license renewal application on August 27, 2007. *A copy of the SER for Beaver Valley can be found on ADAMS using accession number ML091550506 at <http://www.nrc.gov/reading-rm/adams.html>.*
- ◆ On June 25, 2009, NRC staff held two public meetings in Tonopah and Avondale, Arizona, to discuss the agency's environmental reviews of the Palo Verde Nuclear Generating Station (Units 1, 2 and 3) license renewal application. Palo Verde's three pressurized-water reactors are located about 55 miles west of Phoenix, Arizona. The plant owner, Arizona Public Service Company, submitted the renewal application on December 11, 2008, and supplemented the application on April 14, 2009. The current operating licenses for Palo Verde Units 1, 2 and 3 expire on June 1, 2025; April 24, 2026; and, November 25, 2027, respectively. *The Palo Verde application is*

## Federal Agencies and Committees *continued*

*posted on the NRC Web site at <http://www.nrc.gov/reactors/operating/licensing/renewal/applications/palo-verde.html>.*

- ◆ On June 4, 2009, NRC announced that it had renewed the operating licenses for the Vogtle Electrical Generating Plant, Units 1 and 2, for an additional 20 years. The decision to renew the licenses comes after thorough safety and environmental reviews. Vogtle Units 1 and 2 are pressurized-water reactors located about 26 miles southeast of Augusta, Georgia. Southern Nuclear Operating Company submitted the license renewal application on June 29, 2007. The current operating licenses were set to expire on January 16, 2027 for Unit 1 and on February 9, 2029 for Unit 2. With the renewal, the new licenses will expire on January 16, 2047 and on February 9, 2049, respectively. *The safety and environmental review reports, application and letters relating to the Vogtle license renewal can be found at <http://www.nrc.gov/reactors/operating/licensing/renewal/applications/vogtle.html>.*
- ◆ On June 4, 2009, NRC announced that staff has issued an SER with open items for the proposed renewal of the operating licenses for Prairie Island Nuclear Generating Plant, Units 1 and 2. Overall, the results show that the applicant has identified actions that have been or will be taken to manage the effects of aging. The open items, which are not unusual during the license renewal process, involve additional reviews of the waste-gas decay tanks, vessel internals program, and the reactor and structures' monitoring programs. The plant is located in Welch, Minnesota. It's operator, Northern States Power Company, has applied for a 20-year license extension for each of the two units at the site. If approved, the expiration date for Unit 1 would be extended to August 9, 2033 and for Unit 2 would be extended to October 29, 2034. *A copy of the SER can be found on ADAMS*

*using accession number ML091040454 at <http://www.nrc.gov/reading-rm/adams.html>.*

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 54 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 that, if issued, provide authorization to construct and, with conditions, operate a nuclear power plant at a specific site and in accordance with laws and regulations.

In this regard, the agency recently took the following actions.

- ◆ On July 16, 2009, NRC made available the public version of a COL application for two new reactors at the Turkey Point site, about 25 miles south of Miami. The prospective applicant, Florida Power & Light, submitted an application and associated materials for a license to build and operate two AP1000 reactors at the site on June 30, 2009. Staff is currently conducting an initial check to determine whether the application contains sufficient information required for a formal review. A decision on whether to "docket," or

accept, it is expected by early September. If the application is accepted for formal review, the NRC will then notice an opportunity for the public to request an adjudicatory hearing. *A copy of the application, minus proprietary and security-related details, can be found at <http://www.nrc.gov/reactors/new-reactors/colo/turkey-point.html>.*

- ◆ On June 23-24, 2009, an Atomic Safety and Licensing Board (ASLB) panel heard oral argument on a request for a hearing in the South Texas Project COL proceeding in Bay City, Texas. The ASLB is NRC's quasi-judicial arm dealing with licensing matters. NRG and South Texas Project Nuclear Operating Company submitted the COL application and associated information on September 20, 2007. The application was updated on January 31, 2008 and September 24, 2008. The applicant seeks approval to build and operate two Advanced Boiling Water Reactors (ABWR) at the site—which is located approximately 12 miles southwest of Bay City. *Documents related to the South Texas Project COL application are available at <http://www.nrc.gov/reactors/new-reactors/col/south-texas-project.html>. Documents pertaining to the ASLB proceeding are available at <http://www.nrc.gov/reading-rm/adams/web-based.html>.*
- ◆ On June 10-11, 2009, an ASLB panel heard oral arguments on a request for a hearing in the Comanche Peak COL proceeding in Granbury, Texas. Luminant Generation submitted the COL application and associated information on September 19, 2008. The application was updated in November and December of 2008. Luminant seeks approval to build and operate two U.S. Advanced Pressurized Water Reactors (US-APWR) at the site—which is located about four miles north of Glen Rose. *Documents related to the Comanche Peak COL application are available at <http://www.nrc.gov/reactors/new-reactors/col/comanche-peak.html>. Documents*

*pertaining to the ASLB proceeding are available at <http://www.nrc.gov/reading-rm/adams/web-based.html>.*

*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>.*

## NRC Requests Plans for Decommissioning Shortfalls

On June 19, 2009, the U.S. Nuclear Regulatory Commission announced that the agency had contacted 18 nuclear power plants to clarify how the companies will address the recent economic downturn's effects on funds to decommission reactors in the future. The requests from NRC came after a review of the latest reports on decommissioning funding assurance suggested that several plants must adjust their funding plans. Plant operators are required to set aside funds during a reactor's operating life to ensure that the reactor site will be properly cleaned up once the reactor is permanently shut down.

“We'll discuss this with the plants over the next few weeks so that they can explain to us how they'll get the funds back on track to account for their decommissioning cost estimates,” said Tim McGinty, Director of Policy and Rulemaking in the NRC's Office of Nuclear Reactor Regulation. “This is not a current safety issue, but the plants do have to prove to us they're setting aside money appropriately.”

*The letters for the affected plants are available in the NRC's electronic documents database, ADAMS, by entering each letter's accession number at <http://adamswebsearch.nrc.gov/dologin.htm>.*

## NRC Proposes to Amend Emergency Preparedness Requirements

Earlier this summer, NRC extended the public comment period for a proposed rule on emergency preparedness requirements from 75 to 150 days. The extension was granted after several stakeholders requested additional time based on the extensive nature of the proposed rule and guidance changes, and the need for additional time to evaluate the impact of these changes on their emergency preparedness programs. After the extension, comments on the proposed rule were accepted through August 3, 2009.

The proposed rule, including associated guidance documents, would change emergency preparedness requirements for currently operating nuclear power plants, for those that might be licensed and built in the future, and for operating research and test reactors. It would limit the duties of a plant's onsite emergency responders to ensure that they are not overburdened during an emergency event. It would also require specific provisions to protect them and other plant personnel during a hostile-action event. In addition, the proposed rule would require all nuclear power plants to incorporate hostile-action scenarios in their drills and exercises, which currently primarily focus on nuclear-related scenarios. New requirements for back-up measures for alerting and notification systems are also included in the proposed rule.

NRC held public meetings on the proposed rule earlier this summer in Pennsylvania, Georgia, Florida, Illinois, Maryland and Texas. At these meetings, which were hosted jointly by the NRC and the Federal Emergency Management Agency (FEMA), staff from both agencies was available to answer questions about the proposed regulations and draft guidance. After reviewing all of the public comments, NRC staff plans to

submit a proposed final rule to the Commission by mid-2010.

*NRC's original notice on the proposed rule, as published in the Federal Register, can be found at <http://edocket.access.gpo.gov/2009/pdf/E9-10947.pdf>.*

## NRC Proposes Stronger Materials Oversight

The U.S. Nuclear Regulatory Commission is proposing to limit the amount of radioactive material allowed in generally licensed devices in an effort to increase oversight. Under the proposed rule, owners of approximately 1,800 devices (an estimated 1,400 general licensees nationwide) would be required to apply for specific licenses. The change, which applies primarily to fixed industrial gauges, is expected to improve safety, security and control by bringing such gauges under increased regulation, thereby making it harder to accumulate a risk-significant amount of radioactive material or to procure a device through subterfuge.

Generally licensed devices that would be affected by the proposed rule fall into Category 3 or the upper limits of Category 4 of the International Atomic Energy Agency's (IAEA) categorization of radioactive sources. The U.S. government considers Category 1 and Category 2 sources to be the most sensitive from a security standpoint. While sources in lower categories are considered less sensitive, NRC is concerned that a small number of Category 3 or certain Category 4 sources together could be equivalent to a Category 2 amount of radioactive material.

Under the proposed rule, specific licenses would be required for devices containing radioactive

material equal to or greater than 1/10<sup>th</sup> of the IAEA's Category 3 level. This requirement would improve monitoring of the location and use of radioactive materials of higher activity and enhance the accountability and control of such devices. The more stringent requirements of the specific licensing process would minimize the potential for aggregation of radioactive materials to quantities of concern, thereby enhancing the NRC's ability to protect public health and safety. The proposed rule would also clarify the applicable requirements when a device authorized under a general license is instead held under a specific license.

*The proposed rule was published on August 3 in the Federal Register for public comment and is available on-line at <http://edocket.access.gpo.gov/2009/pdf/E9-18438.pdf>. Comments on the changes will be accepted through October 19, 2009. For additional information, please contact Solomon Sahle at (301) 415-3781 or at [Solomon.sahle@nrc.gov](mailto:Solomon.sahle@nrc.gov).*

### **NRC Holds Fuel Cycle Oversight Meetings**

In late July 2009, U.S. Nuclear Regulatory Commission staff hosted three days of meetings to discuss plans to revise the process used for oversight and inspection of nuclear fuel enrichment, processing and manufacturing facilities licensed by the NRC. The meetings, which were open to the public, were held in the NRC Region III office's Fuel Facility Inspection conference room in Atlanta, Georgia.

NRC plans to develop a fuel cycle oversight process that is more risk informed and performance based. During the course of the

three days of meetings, NRC staff discussed a revised process for evaluating regulatory performance and certain inputs into that process, such as cornerstone definitions, performance indicators, a significance determination process and what constitutes a licensee performance deficiency. The meetings, which included NRC staff and industry representatives, included designated points for public participation.

*The meeting notice and agenda can be accessed through the NRC's public electronic reading room at [www.nrc.gov/reading-rm/adams.html](http://www.nrc.gov/reading-rm/adams.html). Entering ML091870092 can access the meeting notice. For additional information, please contact Jose Diaz at (404) 562-4736 or at [jose.diaz@nrc.gov](mailto:jose.diaz@nrc.gov).*

### **NRC Issues FY 09 Fees Rule**

Earlier this summer, the U.S. Nuclear Regulatory Commission announced that the agency is amending its regulations to reflect the licensing, inspection and annual fees that it will charge its applicants and licensees for fiscal year 2009. The agency charges two types of fees. One is for specific NRC services, such as licensing and inspection activities. This fee is calculated using the current hourly rate multiplied by the time spent by staff performing a service. The other is an annual fee paid by licensees, which recovers generic regulatory expenses and other costs not covered through fees for specific services. These fees are contained in NRC regulations 10 CFR Part 170 (fees for license-specific services) and 10 CFR Part 171 (annual fees). The fees are paid to the NRC and then transferred to the U.S. Treasury's general fund.

Federal law requires NRC to recover, through fees



to applicants and licensees, 90 percent of its budgetary authority for FY 2009 (October 1, 2008 through September 30, 2009), less the amounts appropriated from the Nuclear Waste Fund for high-level radioactive waste activities and from general funds for waste-incident-to-reprocessing and generic homeland security activities. The total amount of fees to be recovered by September 30 is approximately \$870.6 million, which represents an increase of approximately \$91.5 million over that recovered in FY 2008.

The FY 2009 fee rule, which was published in the *Federal Register* on June 10, 2009, includes fees based upon the Omnibus Appropriations Act of 2009. Approximately one-third of the fees will be billed for specific services (Part 170) and the remaining two-thirds will be billed to annual fees (Part 171). The hourly rate for Part 170 activities increases about 8 percent from \$238 to \$257 per hour. The increase is due primarily to an increase in reactor license renewals and new uranium enrichment and recovery licensing activities. In FY 2009, NRC decreased fees for small entities.

NRC estimates that the FY 2009 annual fees will be paid by 104 nuclear power plant licensees, 4 non-power reactors, 19 spent fuel storage/reactor-in-decommissioning facilities, 11 fuel cycle facilities, 7 uranium recovery facilities and approximately 3,800 material licensees.

## NRC Issues FY 2008 Abnormal Occurrences Report

Earlier this summer, the U.S. Nuclear Regulatory Commission released its annual report on abnormal occurrences for fiscal year 2008, citing 10 instances that occurred in licensed medical facilities during that period. The report details investigations of each incident by the NRC, Agreement States and licensees, as well as measures taken to ensure such incidents do not recur. The report—which was published as NUREG-0090, Volume 31—was transmitted to Congress on May 16, 2009. A notice of the report's availability was published in the *Federal Register* on June 8, 2009.

An incident or event is considered to be an abnormal occurrence if it involves a major reduction in the degree of protection of public health and safety. Abnormal occurrences can include, but are not necessarily limited to, moderate exposure to or release of radioactive material licensed by the NRC; major degradation of safety-related equipment; or major deficiencies in design, construction, use of or management controls for facilities or radioactive material licensed by the NRC.

For FY 2008, there were no abnormal occurrences at NRC-licensed nuclear power reactors. Five of the 10 abnormal occurrences in medical facilities involved NRC licensees, while the other five involved Agreement State licensees. Two of the events involved exposure of an embryo or fetus. The rest were medical events, such as misadministration of radioactive material during diagnostic or therapeutic procedures. Thousands of such procedures are safely conducted in U.S. medical facilities each year.

*A copy of the report on abnormal occurrences for fiscal year 2008 can be found on the NRC's Web site at <http://www.nrc.gov/reading-rm/doc-collections/congress-docs/correspondence/2009/>.*

## Federal Agencies and Committees *continued*

*(Continued from page 5)*

Forum's Chair-Elect, Leonard Slosky, will serve as session moderator.

Chair-Elect Leonard Slosky will begin the session by discussing low-level waste management and disposal and related issues. A panel of speakers—including Miguel Azar of Exelon Nuclear, Gary Butner of the California Department of Health, and Dale Mack of the Morehouse School of Medicine—will address the impact of the closure of Barnwell and the loss of Class B and C waste disposal access. The session will conclude with comments and perspectives offered by Benjamin Johnson, Chairman of the Atlantic Compact Commission.

The LLW Forum's Executive Director, Todd D. Lovinger, will also be in attendance and available to assist with the session.

*For additional information on the Third Annual RadWaste Summit, please go to <http://www.exchangemonitor.com> or go directly to <http://www.radwastesummit.com/>.*

*(Continued from page 17)*

*Information about Fermi 1 is available on the NRC Web site at <http://www.nrc.gov/info-finder/decommissioning/power-reactor/enrico-fermi-atomic-power-plant-unit-1.html>. The proposed license termination plan is available for viewing on the NRC's on-line document library, ADAMS, at <http://www.nrc.gov/reading-rm/adams/web-based.html>, by entering accession number ML090970803.*

# To Obtain Federal Government Information

### by telephone

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

### by internet

- NRC Reference Library (NRC regulations, technical reports, information digests, and regulatory guides). ..... [www.nrc.gov](http://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](mailto:listserv@unixmail.rtpnc.epa.gov)
- EPA • (for program information, publications, laws and regulations) ..... [www.epa.gov](http://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](http://www.access.gpo.gov)
- GAO homepage (access to reports and testimony) ..... [www.gao.gov](http://www.gao.gov)

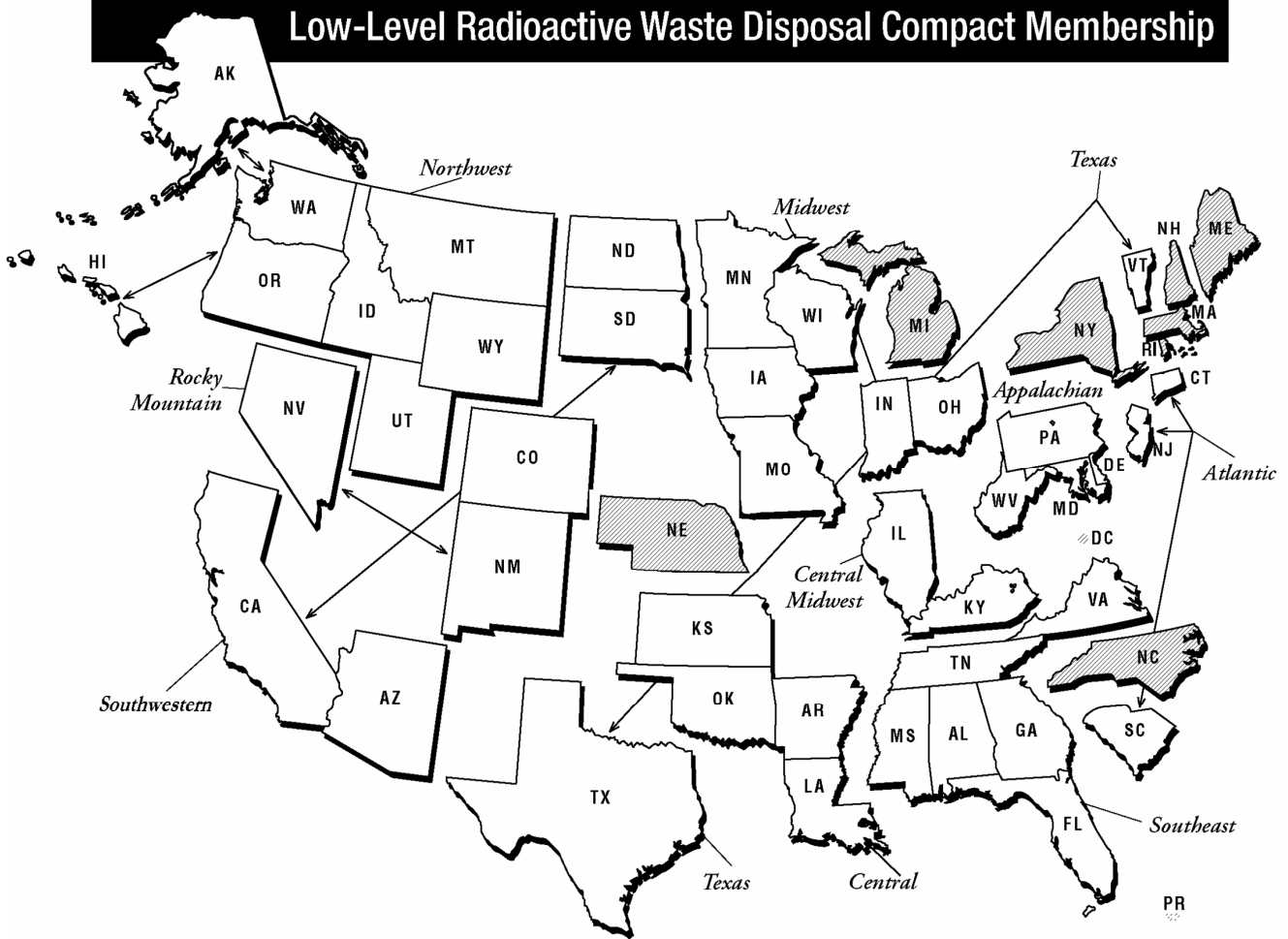
**To access a variety of documents through numerous links, visit the web site for the LLW Forum, Inc. at [www.llwforum.org](http://www.llwforum.org)**

### 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](http://www.llwforum.org). The *Summary Report* and accompanying Development Chart have been available on the LLW Forum web site since January 1997.

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

# Low-Level Radioactive Waste Disposal Compact Membership



**Appalachian Compact**

Delaware  
Maryland  
Pennsylvania  
West Virginia

**Atlantic Compact**

Connecticut  
New Jersey  
South Carolina

**Central Compact**

Arkansas  
Kansas  
Louisiana  
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**Central Midwest Compact**

Illinois  
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**Northwest Compact**

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Utah  
Washington  
Wyoming

**Midwest Compact**

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Iowa  
Minnesota  
Missouri  
Ohio  
Wisconsin

**Rocky Mountain Compact**

Colorado  
Nevada  
New Mexico

*Northwest accepts Rocky Mountain waste as agreed between compacts*

**Southeast Compact**

Alabama  
Florida  
Georgia  
Mississippi  
Tennessee  
Virginia

**Southwestern Compact**

Arizona  
California  
North Dakota  
South Dakota

**Texas Compact**

Texas  
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