

LLW *notes*

Volume 24, Number 3 May/June 2009

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

Court Issues Ruling re NW Compact's Authority Over Clive Facility

On May 15, 2009, the U.S. District Court for the District of Utah, Central Division, issued a ruling on the parties' various motions for summary judgment on the first count of a lawsuit that seeks, among other things, a declaratory judgment "to clarify the authority of the Northwest Compact to govern *EnergySolutions'* privately owned, commercial, low-level radioactive disposal site in Clive, Utah." (See *LLW Notes*, May/June 2008, pp. 25-28.) The court granted in part and denied in part the parties' motions, consistent with the below-stated conclusions.

EnergySolutions—operator of the Clive facility in Utah—initiated the lawsuit on May 5, 2008. 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.)

Overview of the Court's Ruling

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 compact's regional disposal facility—which is the Richland facility operated by US Ecology—regardless of the origin of waste that is sent thereto.

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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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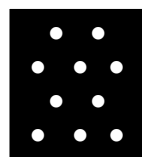
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Key to Abbreviations

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.

LLW Forum Welcomes Exelon and Entergy as New Members

The Low-Level Radioactive Waste Forum, Inc. (LLW Forum) is pleased to announce that it has received and accepted new member applications from both Exelon Corporation and Entergy, Inc. for 2009.

Miguel Azar (Radioactive Waste Manager) and Chris Brown (Director of Government Affairs) will serve as Exelon's designated liaisons to the LLW Forum.

Mark Carver (Manager, Fleet Radwaste), Bruce McDonald (Pilgrim Nuclear Power Station), and Paul Stokes (Grand Gulf Nuclear Power Plant) will serve as Entergy's designated liaisons to the LLW Forum.

Exelon

Exelon is one of the nation's largest electric utilities with approximately \$19 billion in annual revenues. Exelon distributes electricity to approximately 5.4 million customers in Illinois and Pennsylvania, and gas to 485,000 customers in the Philadelphia area. In addition, for energy delivery, Exelon's operations include energy generation and power marketing.

Exelon has one of the industry's largest portfolios of electricity generation capacity, with a nationwide reach and strong positions in the Midwest and Mid-Atlantic. Exelon operates the largest nuclear fleet in the United States and the third largest commercial nuclear fleet in the world.

Headquartered in Chicago, Exelon trades on the New York Stock Exchange under the ticker symbol EXC.

For additional information about Exelon, please go to <http://www.exeloncorp.com/>.

Entergy

Entergy Corporation is an integrated energy company engaged primarily in electric power

production and retail distribution operations. Entergy is the second-largest nuclear generator in the United States. The company owns and operates power plants with approximately 30,000 megawatts of electric generating capacity and employs approximately 14,700 people. Entergy delivers electricity to 2.7 million utility customers in Arkansas, Louisiana, Mississippi and Texas and supplies natural gas to approximately 184,000 customers in Baton Rouge and New Orleans. The company operates a system composed of more than 15,500 miles of high-voltage transmission lines and 1,550 transmission substations.

Entergy is a Fortune 500 company with revenues of more than \$13 billion in 2008. Entergy and its charitable foundation awarded more than \$14.5 million in grants in 2007.

For additional information about Entergy, please go to <http://www.entergy.com>.

LLW Forum

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

The next meeting of the LLW Forum—which is being hosted by the State of Utah—will be held at

(Continued on page 5)

Register Now: Fall 2009 LLW Forum Meeting Park City, Utah

Registration for the fall 2009 Low-Level Radioactive Waste Forum meeting is now open. The meeting—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.

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. 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. Additional information on the NRC workshops found at 74 *Federal Register* 30,175 (June 24, 2009).

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. 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 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.

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the Marriott Hotel in Park City, Utah on 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. Registration for the meeting is now open. A meeting bulletin and registration form can be found on the Home Page of the LLW Forum's web site at www.llwforum.org. (See related story, this issue.)

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

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

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.) 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.

Atlantic Compact/State of New Jersey

New Jersey Seeks Agreement State Status

On May 26, 2009, the U.S. Nuclear Regulatory Commission announced that the agency is considering a request from New Jersey Governor Jon Corzine to assume part of the agency's regulatory authority over certain nuclear materials in the state. If the request is accepted, New Jersey will become the 37th state to sign such an agreement with the NRC.

Under the proposed agreement, NRC will transfer to New Jersey the responsibility for licensing, rulemaking, inspection and enforcement activities for:

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

If the proposed agreement is approved, NRC will transfer an estimated 500 licenses for radioactive material to the state's jurisdiction. In addition, New Jersey will retain regulatory authority for approximately 500 NARM licenses, including 300 who also hold NRC licenses. The licensees will have their NRC and New Jersey licenses combined into a single state license. In total, New Jersey would then have jurisdiction over approximately 700 licensees.

By law, NRC will retain jurisdiction over commercial nuclear power plants and federal agencies using certain nuclear material in the state. In addition, NRC will retain authority for the

review, evaluation and approval of sealed radioactive materials and devices containing certain nuclear materials within the state, as well as over the regulation of the tailings and other wastes from uranium milling within New Jersey.

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

An announcement of the proposed agreement and the NRC staff's draft assessment of the New Jersey program were published in the *Federal Register* on May 27, 2009 ... as well as weekly thereafter for a total of four weeks. In addition, copies of the proposed agreement, the Governor's request, and supporting documents—as well as the draft assessment—are available through NRC's Agency-wide Documents Access and Management System (ADAMS).

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

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

Atlantic Compact/State of South Carolina

Discussions Held re Progress on Mixed-Oxide Plant

On April 29, 2009, officials from Shaw Areva MOX Services met with U.S. Nuclear Regulatory Commission staff to discuss the current status of the license review, oversight activities, and construction of the mixed-oxide (MOX) nuclear fuel fabrication facility at the Savannah River Site. The meeting was held at the federal building in Aiken, South Carolina. Members of the public were allowed to observe the meeting and were given an opportunity to speak with NRC staff.

The MOX facility will fabricate fuel for use in commercial nuclear power plants, using a mixture of uranium and plutonium left over from U.S. weapons production. NRC issued a construction authorization for the facility in March 2005. The agency is currently reviewing Shaw Areva MOX Service's application for an operating license. Public meetings were held in the vicinity in April 2007 and December 2008.

public to speak about specific environmental issues that should be addressed in the report.

Areva Enrichment Services LLC had previously submitted an application for a license to construct and operate a gas centrifuge uranium enrichment facility near Idaho Falls. The application—which was originally submitted on December 30, 2008—seeks permission to enrich uranium for use in the production of fuel for commercial nuclear power reactors. Areva resubmitted the application on April 24th of this year in order to double the facility's proposed production capacity.

NRC staff has determined that the license application is sufficiently complete to allow the agency to begin its formal environmental review. A notice of intent to prepare an environmental impact statement was published on May 4 in the *Federal Register*.

For additional information, please contact Tarsha Moon of the NRC at (800) 368-5642, ext. 7843, or at Tarsha.Moon@nrc.gov. Written comments may be submitted to EagleRock.EIS@nrc.gov.

Northwest Compact/State of Idaho

Meeting Held re Proposed Areva Enrichment Facility

On June 4, 2009, the U.S. Nuclear Regulatory Commission held a public meeting to seek comments about specific issues that should be addressed in the agency's environmental review of a proposed uranium enrichment facility. During the course of the meeting—which was held in Idaho Falls, Idaho—NRC staff explained the licensing review process and provided an opportunity for the

Northwest Compact/State of Utah

Energy Solutions Submits Comments re NRC LLRW Briefing

On May 12, 2009, Energy Solutions provided comments to the U.S. Nuclear Regulatory Commission for consideration during the agency's ongoing development of policy related to the management and disposal of low-level radioactive waste. The comments were provided in response to an invitation issued by the Commission in association with a briefing on this topic that was held on April 17, 2009. (See *LLW Notes*, March/April 2009, pp. 1, 30-36.)

States and Compacts *continued*

Energy *Solutions's* Comments

Energy *Solutions* provided comments on the following topics:

- ◆ **Blending:** Energy *Solutions* encourages the Commission to explicitly clarify that the blending of homogeneous media is allowed under NRC regulations and is consistent with the agency's branch technical position (BTP) on concentration averaging and encapsulation. Doing so, according to Energy *Solutions*, would "significantly diminish" the amount of waste being stored due to a lack of disposal access for Class B and C waste. "Much waste destined for storage could be shipped for processing prior to classification as authorized under 10 CFR 20 Appendix G, then processed, and finally classified as Class A for disposal," writes Energy *Solutions*. "Under this approach there would be no intentional mixing of waste to change waste classification because the waste is yet to be classified."
- ◆ **Risk Informing Part 61:** Energy *Solutions* agrees with the nuclear industry's proposal on risk informing Part 61 and supports a rulemaking to update regulations found in 10 CFR 61. In this regard, Energy *Solutions* notes that there have been many advancements in the applicable science since promulgation of Part 61 regulations that will allow the agency to provide more accurate projections of potential radiation exposure to the public. According to Energy *Solutions*, the following key areas merit consideration in performing risk assessments: the actual quantities of radioactive material disposed, the potential for dispersion of the waste forms, the full projected lifetimes of the engineered features used at the disposal site, calibrated site-specific hydrogeological models of the disposal site, updated dose conversion models for the radionuclide concentrations predicted, realistic intruder and exposure pathway scenarios, expected site maintenance activities and defined institutional control period, and reasonable assessment timeframes and expected climatic conditions.
- ◆ **Depleted Uranium:** Energy *Solutions's* letter states that the company's Clive facility has disposed of depleted uranium (DU) since it began operation in 1990. The company concurs with NRC staff recommendations and the Commission's determination that DU will remain as a Class A waste and that site specific analysis will be conducted. "The [Clive] facility's remote location, naturally poor groundwater quality, and arid environment," states Energy *Solutions*, "make it ideal for future consideration for the disposal of large volumes of DU."
- ◆ **Use of Decommissioning Trust Funds:** In the letter, Energy *Solutions* states that there is one simple policy change that the agency should undertake to significantly reduce the volume of waste currently stored in lieu of disposal. That change, states Energy *Solutions*, is "to permit its licensees to use decommissioning trust funds for the purpose for which they were collected prior to cessation of operations." This would allow access to the funds for the disposal of major radioactive components prior to plant shut down.
- ◆ **Disposal of Foreign-Generated LLW:** Energy *Solutions's* letter claims that "misleading statements" have been made regarding the company's lawsuit challenging the Northwest Compact's authority over the Clive facility and the potential for the outcome to affect the operation of compact sites. In particular, Energy *Solutions* takes issue with statements that a court ruling in favor of the company on Counts II and III could result in a loss of exclusionary authority by all of the compacts. In this regard, Energy *Solutions* terms the Clive facility a "national asset" and states that the company's proposal regarding the import of foreign waste will not adversely impact its commitment to maintain Clive's capacity principally for the disposal of domestic waste. "Clive has enough capacity to dispose of all of the Class A LLW from the eventual decommissioning of the 104 U.S. nuclear reactors and still have abundant capacity, over 50 million cubic feet," contends Energy *Solutions*.

Background: NRC Briefing

At the request of the Commissioners, NRC hosted a briefing on low-level radioactive waste management and disposal and related issues on April 17, 2009. The briefing—which was announced in 74 *Federal Register* 12,401 (March 24, 2009)— 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 and a waste generators panel. A Commission question and answer session followed each panel.

For more detailed information regarding the NRC briefing please see [LLW Notes](#), March/April 2009, pp. 1, 30-36. An archived webcast of the briefing can be found at www.nrc.gov. For additional information, please contact Patricia Swain of the NRC at (301) 415-5405.

Huntsman Named Ambassador to China

In late May 2009, Utah Governor Jon Huntsman Jr. accepted President Barack Obama's nomination to serve as the United States' ambassador to China. Huntsman, who speaks Mandarin Chinese, has been outspoken on several issues involving the EnergySolutions' Clive facility in Tooele County. Lt. Governor Gary Herbert will replace Huntsman as Governor of Utah. Herbert will serve through 2010, at which time a replacement will be elected until 2012.

Huntsman was previously nominated by President George H.W. Bush as ambassador to Singapore and was later nominated by President George W. Bush to serve as Deputy United States Trade

Representative. He was unanimously confirmed to both positions, being the youngest ambassador in over a century.

Huntsman was recently re-elected as Governor by a record margin. A poll that was conducted earlier this year by the Salt Lake Tribune found that he enjoyed an 83 percent approval rating.

Northwest Compact/State of Washington

Areva Fuel Fabrication Facility License Renewed

On April 24, 2009, the U.S. Nuclear Regulatory Commission announced that the agency has renewed the operating license of Areva NP's nuclear fuel fabrication facility in Richland, Washington. This Areva facility is licensed to possess and process uranium enriched to a maximum of 5 percent by weight in the isotope U-235 for the manufacture of fuel assemblies for commercial nuclear power plants. This represents the first 40-year renewal of a nuclear facility license in the United States.

Legislation and NRC regulations do not specify the license terms for fuel fabrication facilities. Previously, NRC had licensed fuel fabrication facilities for maximum terms of 20 years. In 2006, however, the Commission authorized extending the maximum license term to 40 years. Actual license terms depend on the age of the facility, its safety programs and procedures, and its aging management process.

Areva submitted a license renewal application on October 24, 2006. NRC published a notice of opportunity to request a hearing on March 15, 2007. No hearing requests were filed. On April 3, 2009, NRC issued an Environmental Assessment and a finding of no significant impact. NRC staff's safety review examined Areva's programs for

criticality safety, fire safety, chemical safety, security and emergency planning.

A public version of the staff's Safety Evaluation Report on the Areva license renewal is available through the NRC's ADAMS online document management system, by entering accession number ML090760702 at this web address: <http://www.nrc.gov/reading-rm/adams/web-based.html>.

Northwest Compact/State of Wyoming

Oral Arguments Heard re Uranium Recovery Facility

On June 9, 2009, an Atomic Safety and Licensing Board (ASLB) heard oral arguments on two challenges to a license renewal application by Cogema Mining, Inc. for the Irigaray and Christensen Ranch in-situ uranium recovery facilities in Wyoming's Powder River Basin. Cogema submitted an application for a 10-year renewal of the facilities on May 31, 2008. The facilities, which are under a single license, have not been operational since 2002. However, on September 30, 2008, NRC approved Cogema's request to return the facilities to operational status.

NRC received petitions from the Oglala Delegation of the Great Sioux Nation Treaty Council and the Powder River Basin Resource Council, raising various contentions challenging Cogema's application. During the oral arguments, which were open for observation by the public, the ASLB addressed standing of the petitioners and the admissibility of their contentions under NRC regulations. Lawyers from the NRC staff and Cogema also participated.

The ASLB is a quasi-judicial arm of the NRC that conducts legal hearings on major licensing actions. More information about the ASLB is available on the NRC web page at <http://www.nrc.gov/about-nrc/organization/aslbfuncdesc.html>.

Southeast Compact

Nominations Sought for 2010 Hodes Award

The Southeast Compact Commission for Low-Level Radioactive Waste Management is seeking nominations for the 2010 Richard S. Hodes, M.D. Honor Lecture Award—a program that recognizes an individual, company, or organization that contributed in a significant way to improving the technology, policy, or practices of low-level radioactive waste management in the United States. The award recipient will present the innovation being recognized at a lecture during the Waste Management '10 Symposium in Phoenix, Arizona. The award recipient will receive a \$5,000 honorarium and all travel expenses will be paid.

Background

Dr. Richard S. Hodes was a distinguished statesman and a lifetime scholar. He was one of the negotiators of the Southeast Compact law, in itself an innovative approach to public policy in waste management. He then served as the Chair of the Southeast Compact Commission for Low-Level Radioactive Waste Management from its inception in 1983 until his death in 2002. Throughout his career, Dr. Hodes developed and supported innovation in medicine, law, public policy, and technology. The Richard S. Hodes, M.D. Honor Lecture Award was established in 2003 to honor the memory of Dr. Hodes and his achievements in the field of low-level radioactive waste management.

Past Recipients

The following individuals and entities are past recipients of the Richard S. Hodes, M.D. Honor Lecture Award:

- ♦ W.H. "Bud" Arrowsmith (2004);
- ♦ Texas A & M University Student Chapter of Advocates for Responsible Disposal in Texas (2004 *honorable mention*);

States and Compacts *continued*

- ◆ William Dornsife (2005);
- ◆ California Radioactive Materials Management Forum (2006);
- ◆ Larry McNamara (2007);
- ◆ Michael Ryan (2008); and,
- ◆ Susan Jablonski (2009).

The Award

The Richard S. Hodes Honor Lecture Award—established in March, 2003—is awarded to an individual, company, or organization that contributed in a significant way to improving the technology, policy, or practices of low-level radioactive waste management in the United States. The award recipient will be recognized with a special plaque and an invitation to present a lecture about the innovation during the annual international Waste Management Symposium (WM '10). The 2010 symposium is sponsored by the University of Arizona and will be held in Phoenix, Arizona in the spring of 2010. A special time is reserved during the Symposium for the lecture and the award presentation. The Southeast Compact Commission will provide the award recipient a \$5,000 honorarium and will pay travel expenses and per diem (in accordance with Commission Travel Policies) for an individual to present the lecture.

Criteria

The Richard S. Hodes Honor Lecture Award recognizes innovation industry-wide. The award is not limited to any specific endeavor—contributions may be from any type of work with radioactive materials (nuclear energy, biomedical, research, etc.), or in any facet of that work, such as planning, production, maintenance, administration, or research. The types of innovations to be considered include, but are not limited to:

- ◆ conception and development of new approaches or practices in the prevention, management, and regulation of radioactive waste;
- ◆ new technologies or practices in the art and science of waste management; and,
- ◆ new educational approaches in the field of waste management.

The criteria for selection include:

1. *Innovation.* Is the improvement unique? Is it a fresh approach to a standard problem? Is it a visionary approach to an anticipated problem?
2. *Safety.* Does the practice enhance radiation protection?
3. *Economics.* Does the approach produce significant cost savings to government, industry or the public?
4. *Transferability.* Is this new practice applicable in other settings and can it be replicated? Does it increase the body of technical knowledge across the industry?

Eligibility

To be eligible for the award, the individual/group must consent to being nominated and must be willing to prepare and present a lecture about the innovation being recognized at the Waste Management Symposium. Individuals or organizations can nominate themselves or another individual, company, institution, or organization.

Nominations

To nominate yourself or another individual, company, or organization for this distinguished award, please contact:

Ted Buckner, Associate Director
Southeast Compact Commission
21 Glenwood Avenue, Suite 207
Raleigh, NC 27603
919.821.0500
tedb@secompact.org

or visit the Southeast Compact Commission's website at <http://www.secompact.org/>.

Nominations must be received by June 30, 2009.

Southeast Compact/State of Tennessee

Hearing Opportunity for Watts Bar 2 Reactor

On May 1, 2009, the U.S. Nuclear Regulatory Commission announced the opportunity for the public to request a hearing on the Tennessee Valley Authority's (TVA) updated application for an operating license for the Watts Bar Unit 2 reactor near Spring City, Tennessee. TVA is seeking approval to operate a second Westinghouse-designed pressurized-water reactor at the site, which is located approximately 50 miles northeast of Chattanooga, Tennessee.

TVA originally submitted the application and associated information in June of 1976 for both Units 1 and 2. TVA completed Unit 1 and NRC issued a full-power operating license therefore in 1996. TVA deferred completion of Unit 2, however, at that time. The company has now restarted construction and NRC has resumed its review. By letter dated March 4, 2009, TVA updated its original application. The docket number for this application is 50-391.

In December 2008, NRC staff provided background information on the licensing and hearing process during a public meeting held in Harriman, Tennessee. More recently, NRC published a Notice of Opportunity to Request a Hearing in the *Federal Register*. Petitions may be filed by anyone whose interest may be affected by the proposed license and who meets criteria set out in the NRC's web site. The filing deadline is June 30, 2009.

A request for a hearing must be electronically submitted in a timely manner to the NRC's Electronic Information Exchange (EIE) system. The request must be filed in accordance with the NRC's E-Filing Rule that appeared in the *Federal Register* on August 28, 2007 at <http://edocket.access.gpo.gov/2007/pdf/E7-16898.pdf>. Additional guidance and instructions regarding electronic submissions to the NRC EIE system are

available on the agency's web site at <http://www.nrc.gov/site-help/e-submittals.html>.

TVA's application, minus proprietary or security-related details, can be found at <http://www.nrc.gov/reactors/plant-specific-items/watts-bar.html>. The hearing notice may be found at <http://edocket.access.gpo.gov/2009/pdf/E9-10043.pdf>. Additional information on the hearing process is available at <http://www.nrc.gov/about-nrc/regulatory/adjudicatory/hearing.html>.



Texas Compact

Texas LLRW Compact Commission Holds June Meeting

The Texas Low-Level Radioactive Waste Compact Commission ("the Commission") held a meeting on Friday—June 5, 2009. The meeting was held in Suite 227 of the Rusk Building at 208 East 10th Street in Austin, Texas.

Although the meeting was open to the general public, the meeting announcement noted that the Commission reserved the right to meet in closed session as authorized by the Texas Open Meetings Act.

Agenda

The meeting began at 9:30 a.m. with a call to order, roll call, introduction of guests, and status of recordings of past meetings.

Thereafter, the compact commission discussed the following agenda items:

- ♦ funding and budgetary issues including potential revisions to the FY 2009 through 2011 budgets per the interagency contract between the compact commission and the Texas Commission on Environmental Quality (TCEQ), legislative appropriations rider for

States and Compacts *continued*

payment of the annual pro-rata share of the commission operations for FY 2010 – 2011, and invoicing Vermont for its party state pro-rata share of commission operations;

- ◆ hiring and contracting issues including for the positions of an interim executive director, legal counsel, certified public accountant, information technology service of e-mail and internet site design and hosting, and other services;
- ◆ the purchase of essential equipment;
- ◆ the results of an April 2009 stakeholder meeting and adoption of a rule or rules on 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;
- ◆ requests or petitions made by compact generators, compact facility, and non-compact entities;
- ◆ a request by the Southeast Compact Commission for Low-Level Radioactive Waste Management on amicus briefing in their lawsuit against the State of North Carolina that is pending before the U.S. Supreme Court; and,
- ◆ bylaws, plans, and operating rules and other planning issues.

At the end of the meeting, the compact commission discussed potential agenda items for the next meeting, as well as the next meeting date and location. The agenda provided for an opportunity for public comment at the end of the meeting.

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 73rd Legislature, was established to provide for the management and disposal of low level radioactive waste while maintaining the priority of the health, safety and welfare of the citizens of Texas. Michael Ford of Amarillo was named as Chairman

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

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 or contact the Radioactive Materials Division at (512) 239-6466.

Texas Compact/State of Texas

WCS Begins to Store Studsvik-Processed Class B and C Waste

TCEQ Cautions Unauthorized Receipt May Subject WCS to Enforcement Action

On June 2, 2009, Waste Control Specialists LLC ("WCS") put out a press release announcing its plans to begin storing Class B and C low-level radioactive waste received from Studsvik, Inc. WCS notified the Texas Commission on Environmental Quality (TCEQ) that the company expected to receive the first shipment of this waste, which will be thermally processed at Studsvik's facility in Tennessee, at the company's facility in Andrews County on Monday—June 8, 2009. In addition, WCS notified the Texas Low-Level Radioactive Waste Compact Commission ("Texas Compact Commission") of its plans to begin interim storage of this waste. WCS acknowledges that it may not permanently dispose of this waste in the compact disposal site without prior authorization from the Texas Compact Commission, but specifically states that the company plans to seek such authorization once WCS meets all of the conditions of its pending disposal license application.

This action by WCS followed a recent letter from TCEQ—which was dated May 20, 2009—that cautions that the agency “has not made a determination that acceptance of the Studsvik Waste is authorized under WCS’ existing storage and processing license.” TCEQ’s letter further states, “WCS may be subject to enforcement for the receipt of any waste material not authorized in its license.”

The Issues

WCS’ Original Analysis On May 11, 2009, WCS submitted information to the TCEQ outlining its analysis regarding the proposed receipt and storage

of Class B and C low-level radioactive waste from Studsvik’s processing facility located in Erwin, Tennessee. The analysis concludes that the processed waste meets all of the required criteria concerning form, volume and level of activity for receipt and storage at the WCS facility pursuant to its existing license conditions. The analysis further contends that the proposed action meets the “interim storage” requirements of the license and therefore is not subject to the 365-day holding time limit. Even if such a time limit were deemed to apply, which WCS contends it does not, the company points out that Studsvik has a “take-back” agreement with the State of Tennessee and the waste could therefore be shipped back to Studsvik.

TCEQ’s Response By letter dated May 20, 2009, TCEQ acknowledged receipt of the WCS submission and stated that staff is currently reviewing it. TCEQ’s letter specifically states that the agency has not yet made a determination as to whether or not the acceptance of such waste is authorized and that the receipt of any waste material not authorized in WCS’ license would subject the company to enforcement action. TCEQ’s letter also points out that license conditions require WCS to notify the agency’s Executive Director in writing at least three working days in advance of the initial receipt of waste. “The TCEQ urges WCS to promptly notify the TCEQ in accordance with this license condition,” states the letter. “Prompt notification will allow TCEQ to advise WCS of its evaluation of WCS’ submission prior to any shipment of the Studsvik Waste.”

WCS’ Response WCS responded through its attorneys by letter dated June 2, 2009. In the letter, WCS takes the position that (1) WCS has the authority under its license to accept the Studsvik waste for interim storage for a period that could exceed 365 days, and (2) that the three day notice requirement only applied to the first receipt of waste at the storage facility in 1998 and is therefore not applicable to the Studsvik waste. The letter acknowledges that WCS may not permanently dispose of this waste in the compact disposal site without authorization from the Texas Compact Commission, but specifically states that the

States and Compacts *continued*

company plans to seek such authorization once WCS meets all of the conditions of its pending disposal license application.

Implications of Recent Legal Decision In the June 2 letter, WCS' attorneys reference their interpretation of the significance of the recent May 15 ruling in a lawsuit that seeks, among other things, a declaratory judgment "to clarify the authority of the Northwest Compact to govern Energy Solutions' privately owned, commercial, low-level radioactive disposal site in Clive, Utah." (See related story, this issue.)

WCS is cognizant of the restrictions in the Texas Compact pertaining to the 'management' of out of compact waste. However, with the recent Federal court decision in the Energy Solutions litigation involving the Northwest Interstate Compact, it is apparent that the Compact Commission may only regulate the disposal of waste at the Compact Waste Disposal Facility and not the storage and processing of such waste at a separate facility other than the designated regional disposal facility.

Studsvik's Thermal Processing Technique

According to WCS' press release, Studsvik's thermal processing technique "transforms the low-level radioactive waste into a safer form for storage and ultimate disposal." WCS further asserts that the Studsvik process "reduces the volume of low-level radioactive waste by more than 80 percent, which allows the efficient use of valuable landfill space."

WCS states that it is "proud to participate in this innovative program to increase the safety and to reduce the volume of low-level radioactive waste."

WCS' Proposed Business Model

WCS believes that the teaming agreement that it has entered into with Studsvik "will greatly reduce the risk and administrative burdens of generators when compared to the use of multiple storage facilities

across the United States." In this regard, WCS President Rod Baltzer states as follows:

We believe the ability to store low-level radioactive waste at a central storage facility and then dispose of it near that facility is in the best interests of all parties. Studsvik's processing, and our storage, reduces the burden on generators of the waste that do not have storage facilities and will allow the waste to be processed into a safer and more compact form for storage. Our licenses and location will also minimize transportation of the Studsvik waste as it will be shipped from generators to Studsvik and then to one location for storage and possible eventual disposal instead of back across the nation to the generators. This is one of the key benefits of WCS' one-stop business model—having a storage and processing license, *and* a low-level radioactive waste disposal license creates a clear business advantage that benefits our customers and provides additional safety for the citizens of the state of Texas.

License Application Status

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Compact Commission

On November 25, 2008, Texas Governor Rick Perry (R) announced appointments to the Texas Compact Commission. (See *LLW Notes*, November/December 2008, p. 9.) The Texas Compact Commission, which was created pursuant to Senate Bill 1206 in the 73rd Legislature, was established to provide for the management and disposal of low level radioactive waste while maintaining the priority of the health, safety and welfare of the citizens of Texas. The Texas Compact 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.)

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 Compact Commission including Richard Dolgener, Bob Gregory, Kenneth Peddicord, and Robert Wilson.

The Texas Compact Commission held its most recent meeting on June 5, 2009. (See related story, this issue.) One of the listed items on the agenda was the consideration and potential action on requests or petitions made by compact generators, compact facility, and non-compact entities. (See related story, this issue.)

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

For additional information on WCS' proposed business model, please contact Rod Balter of WCS at (972) 450-4235 or Bill Dornsife of WCS at (717) 540-5220.

For additional information on the Studsvik processing technique, please contact Lewis Johnson of Studsvik at (404) 497-4910 or Tom Duberville of Studsvik at (404) 497-4905.

Andrews County Passes LLRW Disposal Bond *Opponents Sought Recount*

On May 9, 2009, voters in Andrews County, Texas approved a \$75 million bond for the planned low-level radioactive waste disposal facility being developed by Waste Control Specialists LLC (WCS). The bond, which passed by a vote of 642 to 639, would allow WCS to borrow money from the county, thereby taking advantage of its credit rating.

Shortly thereafter, however, opponents filed a formal request for a recount. Twenty-five signatures are required to initiate such a recount. County Judge Richard Dolgener verified that all of the signatures are from registered voters before he accepted the petition. Nonetheless, upon recount, the votes were the same.

The Bond

WCS requested that the bond issue be placed on the May ballot for development of the planned low-level radioactive waste disposal facility. As proposed, the county would take out the bond based on its credit rating and WCS would then repay it.

According to WCS officials, stock from WCS, its parent company (Valhi Inc.), and a year's worth of principle and interest would be put into an account for Andrews County as collateral while the bond is repaid in order to ensure that local taxpayers do not end up with the burden of the loan.

An opposition group called No Bonds for Billionaires opposes granting the bond for WCS'

benefit. The informal group, which was started by sisters Melodye and Peggy Pryor, has been campaigning against passage of the bond.

Under Texas statute, a recount may be granted if 25 registered voters sign a petition within five days of the election and the item on the ballot wins by less than 10 percent of the votes.

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 or contact the Radioactive Materials Division at (512) 239-6466. You may also go to the WCS web site at <http://www.wstexas.com> or contact Chuck McDonald of WCS at (512) 708-8655.

State of North Carolina

Meeting Held re Proposed GE-Hitachi Enrichment Facility

On May 19, 2009, the U.S. Nuclear Regulatory Commission held two public meetings to seek comments about specific issues that should be addressed in the agency's environmental review of a proposed uranium enrichment facility. During the course of the meetings—which were held in Wilmington, North Carolina—NRC staff explained the licensing review process and provided an opportunity for the public to speak about specific environmental issues that should be addressed in the report.

General Electric-Hitachi Global Laser Enrichment LLC (GLE) had previously submitted an environmental report as one part of an application for a 40-year license to construct and operate a laser-based uranium enrichment facility at the existing General Electric/Global Nuclear Fuels-Americas site near Wilmington. The environmental report was submitted on January 30, 2009. GLE has indicated that it intends to file the rest of the application—pertaining to safety aspects of the facility—by the end of June. The proposed facility would enrich uranium for use in the production of fuel for commercial nuclear power reactors.

In March, NRC staff determined that the environmental report is sufficiently complete to allow the agency to begin its formal environmental review. A notice of intent to prepare an environmental impact statement was published on April 9 in the *Federal Register*.

For additional information, please contact Antoinette Walker-Smith of the NRC at (800) 368-5642, ext. 6390.

State of New York

West Valley Decommissioning Plan Accepted for Review

The U.S. Nuclear Regulatory Commission has accepted for review the Phase I decommissioning plan for the West Valley Demonstration Project (WVDP) site in western New York. NRC staff has completed its initial review and has determined that the plan contains sufficient information to warrant a technical review. This determination does not indicate NRC approval of the plan, nor does it preclude additional requests for information.

The U.S. Department of Energy submitted the plan on December 3, 2008. It was subsequently revised on March 16th of this year to include additional technical information.

The West Valley site is located on 3,300 acres of land known as the Western New York Nuclear Service Center. The WVDP site, which is a 200-acre portion of the center, contains a former commercial nuclear fuel reprocessing facility that operated from 1966 to 1972, which produced approximately 600,000 gallons of liquid high-level radioactive waste. The WVDP also contains contaminated structures and a radioactive waste disposal area, as well as a waste tank farm, waste lagoons, and above-ground radioactive waste storage areas. Soil and groundwater contamination are also found near these facilities.

DOE's Phase I decommissioning plan envisions remediation activities within the WVDP boundary, including removal of the Main Plant Process Building, the Vitrification Facility, source area of the North Plateau Groundwater Plume, wastewater treatment facility lagoons, and ancillary buildings, foundations, slabs and pads.

Through the West Valley Demonstration Project Act of 1980, Congress gave NRC the authority to review and consult with DOE informally on certain matters related to the project. In a subsequent

Memorandum of Understanding, the two agencies agreed that NRC would review and comment upon DOE's decommissioning plan, and that DOE would provide responses to NRC's comments before initiating Phase I decommissioning activities.

Phase II decommissioning of the remainder of the WVDP and center, or its long-term management, will be determined in the future and are not part of this decommissioning plan.

A copy of DOE's decommissioning plan, the revised plan, and the NRC's letter of application acceptance to DOE are available on the NRC's Agencywide Documents Access and Management System (ADAMS) under accession number ML083659423, ML090771108 and ML090780848 respectively. ADAMS is available at the agency's web site at <http://www.nrc.gov/reading-rm/adams.html>.

(Continued from page 1)

Analysis of the Court's Ruling

The following is a brief synopsis of the court's ruling. Persons interested in additional detail are directed to the court's decision and the associated legal filings.

The Issues The court framed the issues before it as follows:

"[T]he Court must determine the intent of Congress: (1) in 1980 and 1985 when it enacted statutory language establishing a framework for national regulation of LLRW disposal; and (2) in 1985 when it enacted statutory language consenting to a number of compacts for the regulation of LLRW disposal. More specifically, the Court must determine what, if any, reservations or limitations Congress intended to be placed on its consent to [the] Northwest [Compact's] organizational documents (the 'Northwest Compact's Charter'). The Court must also determine to what extent Congress intended to lift dormant Commerce Clause restrictions on the ability of states, and by derivation the compacts, to regulate the flow of LLRW in interstate commerce and to regulate the operation of private LLRW disposal facilities operating in interstate commerce, keeping in mind that such intent must be unambiguously expressed."

The Court's Analysis In conducting its analysis, the court first addressed whether or not the Clive facility is a "regional disposal facility" as defined in the Low-Level Radioactive Waste Policy Amendments Act of 1985 ("the 1985 Act"). Once this question was resolved, the court then turned its attention to defining the Northwest Compact's scope of authority to discriminate against out-of-region low-level radioactive waste.

Is the Clive facility a "regional disposal facility" as defined in the 1985 Act?

The parties agree that the 1985 Act granted authority to all of the compacts, including the

Northwest Compact, to restrict or prohibit the importation of out-of-region low-level radioactive waste to a regional disposal facility—which is defined as "a non-Federal low-level radioactive waste disposal facility in operation on January 1, 1985, or subsequently established and operated under a compact."

Although the Clive facility was not in operation in 1985, the Northwest Compact claims that it is nonetheless a regional disposal facility because it has been "established and operated under a compact" by virtue of a requirement imposed by Utah in 1991 that the compact grant approval before waste could be shipped to Clive. *EnergySolutions*, on the other hand, contends that Clive is, and always has been, a private, for profit enterprise and that it is not operated and established under the Northwest Compact. In response, the defendants point out that all currently operated low-level radioactive waste disposal facilities are commercial, for profit enterprises. The defendants further note that for seventeen years the compact has acted as a regulatory body and imposed restrictions over the Clive facility and that *EnergySolutions* has complied therewith.

In its analysis, however, the court notes that the defendants' argument is premised on the implicit assumption that the State of Utah could transform Clive into a regional disposal facility by conditioning approval of its license on consent by the Northwest Compact and compliance by *EnergySolutions*. The court rejected this argument, noting that "the State cannot delegate to [the] Northwest [Compact] authority which the State does not possess, and because discrimination against out-of-state LLRW implicates the Dormant Commerce Clause, neither *EnergySolutions*' actions nor belief in the Northwest [Compact's] alleged authority to regulate is sufficient to bestow actual legal authority on the Northwest [Compact]." The court reasoned that only Congress may grant authority pursuant to the Commerce Clause, so any designation of the Clive facility as a regional disposal facility must be found within the 1985 Act.

Because the 1985 Act clarifies the Low-Level Radioactive Waste Policy Act's ("the 1980 Act's") ambiguous reference to regional disposal facilities, the court believes that Congress understood that there would be some LLRW disposal facilities that would not be considered to be regional disposal facilities. In this regard, the court points out differences between the Clive facility and the Richland facility—the latter of which the court states is clearly a regional disposal facility. Among the differences, according to the court, is the fact that the Richland facility is operated with the express purpose of serving the Northwest Compact and its member states, whereas the Clive facility may only receive limited amounts of waste from within the compact region and relies upon out-of-compact waste to operate profitably. The court also notes that the Richland facility operates on land leased from the State of Washington for the express purpose of providing disposal for the region's waste.

Based on the foregoing, the court concludes that the Clive facility was not established by the Northwest Compact, is not operated under the Northwest Compact, and that the State of Utah's regulatory requirements "are insufficient to designate the Clive Facility as a regional disposal facility under the 1985 Act." In short, the court ruled that the Clive facility does not qualify as a "regional disposal facility" under federal law.

What is the Northwest Compact's scope of authority over out-of-region waste?

In determining whether Congress intended to grant the Northwest Compact with the authority and power to exclude out-of-region waste only from regional disposal facilities or from all low-level radioactive waste disposal facilities, the court looked to the 1980 Act, the 1985 Act and the Omnibus Low-Level Radioactive Waste Interstate Compact Consent Act ("the Consent Act"). In reviewing these three pieces of legislation, the court needed not only to interpret the intent of the language of each individual Act, but also which provisions were retained upon passage of the subsequent legislation.

The 1980 Act:

Although the 1980 Act did not expressly define the term "regional disposal facility," it did authorize states to enter into "such compacts as may be necessary to provide for the establishment and operation" of regional disposal facilities. Similarly, in granting the right to limit disposal access, the 1980 Act does so with respect to "regional disposal facilities under the compact."

The court held that these statements, along with a review of the history of low-level radioactive waste disposal in this country leading up to passage of the 1980 Act, imply a narrow definition of regional disposal facility and a narrow scope of authority to exclude out-of-region waste. The court further determined that "[a] narrow definition is also required by the fact that regulation of LLRW implicates interstate commerce in its production, transportation, and even disposal, and that any waiver of the Dormant Commerce Clause must be in unambiguous terms."

Based on the foregoing, the court ruled that the Northwest Compact has no authority to exclude out-of-region waste from the Clive facility under 1980 Act.

The 1985 Act:

Although the 1985 Act expressly defined the term "regional disposal facility," the court determined that it did not eliminate all ambiguity. "For example, the 1985 Act does not contain language authorizing exclusion of out-of-region waste by Congressionally-approved compacts, as did the 1980 Act, but neither does it contain language abolishing the authority granted by the 1980 Act."

Since the provision of the 1980 Act which authorizes compacts to exclude out-of-region waste from regional disposal facilities is not supplanted by any language in the 1985 Act, and has never been repealed, the court determined that the 1985 Act confers the same authority as that granted by the 1980 Act—which is, specifically, the authority to exclude out-of-region waste from a compact's regional disposal facility.

While the court found that the 1985 Act contains an unambiguous Congressional intent to waive Dormant Commerce Clause restrictions on the regulation of regional disposal facilities, it found no such unambiguous intent to waive these restrictions on the regulation of sites that are not regional disposal facilities. As the court had already determined that Clive is not a regional disposal facility, it therefore held that the 1985 Act does not grant the Northwest Compact the authority to exclude out-of-region waste from the Clive facility.

The Consent Act:

In its review of the Consent Act, the court notes that it provides much greater discriminatory authority than the 1985 Act. The court also notes that the Northwest Compact, as adopted by Congress in the Consent Act, requires the compact's approval before out-of-region low-level radioactive waste may be accepted by "any" facility within a party state. While Congress did not draft the Northwest Compact, the court notes that its ratification transforms it into federal law.

Upon further review, the court determined that, although some provisions of the Consent Act imply an intent by Congress to lift Commerce Clause restrictions on state action, other provisions counter those implications. For instance, the Consent Act grants Congressional consent to the Northwest Compact and "to each and every part and article thereof." However, the Consent Act also states that it is granted "subject to the provisions" of the 1985 Act and "only for so long" as the compacts comply "with all of the provisions" of the 1985 Act. The Consent Act also clearly states that compacts are "in furtherance" of the 1980 Act as amended by the 1985 Act.

As the plain language of the Acts is insufficient to resolve the issues at question, the court turned to other sources to determine the extent of the compact's exclusionary authority—including the history of low-level waste disposal in this country, legislative history and debates, and policy objectives. The court found that the legislative history yields

very little in the way of clarification. Moreover, the court expressed concern that a finding that the compacts have blanket discriminatory authority could be contrary to purposes of the 1980 and 1985 Acts by creating substantial disincentives for the development of purely private waste disposal capacity.

Upon review, the court held that "the Consent Act does not express an unambiguous intent by Congress to grant the nearly unlimited exclusionary authority over LLRW disposal within the compact boundaries that is claimed by the Defendants."

The Court's Ruling Based upon the foregoing, the court found that the 1980 Act is the only unambiguous intent by Congress to lift Dormant Commerce Clause restrictions and that, as it pertains to out-of-region waste, the Congressional grant of authority to restrict access only applies to regional disposal facilities. Accordingly, the court granted EnergySolutions' Motion for Summary Judgment in part insofar as it requests a declaratory judgment that the Northwest Compact has no authority to regulate the flow of out-of-region waste to the Clive facility.

With regard to the regulation of in-region waste, however, the court ruled that the 1980 Act, along with legislative history, provides an unambiguous expression of Congressional intent to allow the compacts to regulate the disposal of waste generated within regional boundaries. In this regard, the court notes that the 1980 Act declares that "low-level radioactive waste can be most safely and efficiently managed on a regional basis." As a result, the court denied EnergySolutions' Motion for Summary Judgment in part insofar as it requests a declaratory judgment that the Northwest Compact has no authority to regulate the flow of in-region waste to the Clive facility.

Next Steps

The case is not yet fully resolved, as the court's ruling and the parties' summary judgment motions only address Count I of the Amended Complaint.

Furthermore, it is not yet known whether any of the parties will choose to appeal the court's ruling.

Finally, regardless of whether or not an appeal is filed, EnergySolutions still must obtain approval from the U.S. Nuclear Regulatory Commission before it may proceed with the proposed importation of waste from Italy. (See "NRC Review and Consideration" section under "Background" below.)

Background

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

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

The Lawsuit Three days prior to the meeting, on May 5, 2008, EnergySolutions filed a lawsuit challenging the Northwest Compact's authority over the Clive facility. (See *LLW Notes*, May/June

2008, pp. 25-28.) Among other things, EnergySolutions argues that (1) the Clive facility is not a "regional disposal facility" as defined by the LLRWPA and the Northwest Compact therefore lacks authority to restrict the flow of LLRW to the facility; (2) NRC's authority and responsibility for the regulation of the export and import of byproducts and nuclear materials preempt any attempt by the Northwest Compact to restrict or prevent the importation of foreign waste to the Clive facility; and, (3) any effort by the Northwest Compact to restrict or prohibit the Clive facility from receiving foreign LLRW would amount to unauthorized discrimination against foreign commerce and would be prohibited by the dormant Commerce Clause of the U.S. Constitution.

The 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.)

NRC Review and Consideration On October 6, 2008, NRC issued an order holding in abeyance until further notice review of EnergySolutions' related import and export license applications. (See *LLW Notes*, September/October 2008, pp. 18-20.) The order acknowledges the legal dispute and states, in part, as follows: "The NRC will defer action on the pending import license application until the dispute over the authority of the Northwest Compact is resolved or EnergySolutions outlines an alternative plan for disposal of the imported LLW."

The order also holds in abeyance pending hearing requests on the license applications that were previously filed by the Utah Attorney General's

Office on behalf of Governor Jon Huntsman, Jr., as well as separate hearing requests filed by the Nuclear Information and Resource Service (NIRS) and a variety of organizations. (See *LLW Notes*, May/June 2008, pp. 9-12.)

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

LLW Notes, January/February 2009, p. 17.) The bills, as introduced, would prohibit the importation of nuclear waste unless the material originated in the United States. The President could grant specific exemption only if an application showed the importation would serve a national or international policy goal, such as a research purpose.

The bills—H.R. 515 and S. 232—are similar to legislation that was introduced in the 110th

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

Court Issues Final Judgment re Clive Facility

On June 17, 2009, the U.S. District Court for the District of Utah, Central Division, 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. *EnergySolutions* initiated the lawsuit after the compact opposed the company's proposal 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.)

By issuing a final judgment, the court has now cleared the way for the case to proceed on appeal. Local news reports indicate that the Northwest Compact plans to file an appeal. On June 18, the Rocky Mountain Compact also decided to pursue an appeal. The State of Utah has indicated that they are evaluating their options.

Regardless of whether or not an appeal is filed, *EnergySolutions* still must obtain approval from the U.S. Nuclear Regulatory Commission before it may proceed with the proposed importation of waste from Italy.

Final Judgment

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.”

Congress. Although hearings were held on that legislation, it did not receive a vote in either chamber of Congress. (See *LLW Notes*, May/June 2008, pp. 20-24.)

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

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.

Alabama, et. al. v. North Carolina

Southeast Compact's Lawsuit Against North Carolina

Status Update

Several LLW Forum members have recently inquired as to the status of the Southeast Compact Commission for Low-Level Radioactive Waste Management's lawsuit against the State of North Carolina that is pending before a Special Master of the U.S. Supreme Court. In response, staff of the Southeast Compact Commission have provided the below information.

In reading this update, please keep in mind that it was drafted by one of the parties to the litigation and therefore presents an overview as detailed from the perspective of the Southeast Compact Commission.

Persons seeking additional information are directed to the pleadings, filings and other court documentation themselves.

In September 1986, pursuant to the Southeast Compact, North Carolina was selected as the host state for the

Southeast Region. North Carolina accepted the designation thus obligating it to site and license a low-level radioactive waste facility. Shortly thereafter, North Carolina made a request to the Commission for financial assistance. Although not obligated to do so, 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 Compact and imposed sanctions on North Carolina in the amount of approximately \$80 million. In the interim, North Carolina purported to withdraw from the Compact and did not comply with the sanctions. In June 2002, the Commission and four Compact States filed a Complaint in the United States Supreme Court, seeking, among other things, to enforce the sanctions order. 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, a Special Master found that the 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 Compact when it ceased performance and that Plaintiffs are entitled to restitution of the \$80 million the states provided North Carolina in reliance on the 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. The Commission is now at that stage of the proceedings in which the Supreme Court will review the Special Master's findings and can either accept or reject them. Exceptions to the Special Master's findings and other related filings would be submitted to the Court during the summer. The Commission expects all of the briefing to be completed by mid-September. The Supreme Court will hear the case in the fall of 2009, and the Commission expects a decision no later than June 2010.

Colorado Department of Public Health and Environment v. Board of County Commissioners of the County of Adams

Court Holds Adams County Misappropriated Waste Fees

On April 23, 2009, the District Court of Adams County in the State of Colorado issued a ruling on cross-motions for partial summary judgment filed in a lawsuit concerning the Clean Harbors Deer Trail facility. In so doing, the court determined that defendant Board of County Commissioners of the County of Adams (“Adams County”) improperly used funds collected pursuant to § 25-15-214, C.R.S. (2008), to pay costs associated with litigation which seeks to prevent Clean Harbor’s operation of the Deer Trail facility.

Section 25-15-214 authorizes the collection of fees from a hazardous waste disposal site in order to cover direct costs of operating the site. As the court found that the actual use of the funds is not allowed by the statute, the court enjoined Adams County from using the funds for this purpose and ordered the county to replenish within 90 days all funds misappropriated to date.

As the cross-motions for summary judgment did not address the issue of civil penalties, which was asserted in the complaint, the court’s order did not address this issue. Accordingly, the court lifted the current stay of discovery and ordered that the case shall proceed henceforth.

Events Background

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

2004 to include a proposal to dispose of radioactive materials in excess of the 1998 State RCRA Permit limits.

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

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

Legal Background

Over the past few years, Adams County has filed several suits claiming, among other things, that the permit and license were improperly issued because the county had not provided its consent. A separate division of the district court and two panels of the appellate court have all held that Adams County lacked standing to challenge the issuance of the permit and license. The issue of standing is currently before the Colorado Supreme Court.

In the case at hand, CDPHE now claims that Adams County misappropriated funds collected pursuant to § 25-15-214 by using them to pay attorneys fees and costs incurred in the above-described litigation. Adams County, however, asserts that the county has broad discretion to allocate the § 25-15-214 funds, as it deems appropriate.

Court’s Interpretation of § 25-15-214

Section 25-15-214 authorizes the collection of fees equal to two percent of the annual estimated gross

Courts *continued*

revenue from a hazardous waste disposal site. The stated purpose for the collection of the fees is to offset “the estimated direct costs of increased state, county, and municipal services created by the hazardous waste disposal site.” State statutes contain a non-exclusive list of allowable costs and direct how the proceeds may be used. According to the court’s ruling, the statutes are not ambiguous and must be applied as written.

In considering the issues before it, the court concluded that CDPHE has standing to pursue this claim and that it does not turn on Adams County’s ultimate success or failure in its lawsuits against CDPHE. Regardless of the ultimate outcome of those cases, the question presented in the case at hand is only whether Adams County may pay its litigation expenses from the funds collected pursuant to § 25-15-214. Thus, the court found that it is not necessary to delay its ruling until the Supreme Court makes a decision on Adams County’s appeals.

In this regard, the court held as follows:

The express purpose of § 25-15-214 is to offset the estimated costs of increased services caused or necessitated by the operation of a hazardous waste disposal site. The attorney fees and costs incurred by the Clean Harbors litigation were not caused or necessitated by operation of the hazardous waste disposal site but, rather, were incurred as a result of the county’s decision to attempt to prevent operation of that site. That is plainly not a direct cost of operating the site. Therefore, [Adams County] has improperly used § 25-15-214 funds to pay costs associated with the Clean Harbors litigation.

Court’s Order

Based upon its findings and ruling, the court issued the following orders:

- ◆ Adams County shall immediately cease using funds collected pursuant to § 25-15-214 to pay

attorneys fees and other costs in the Clean Harbors litigation. The county is further enjoined from any future use of those funds for that purpose.

- ◆ Within 90 days of the court’s order, Adams County shall replenish the § 25-15-214 fund by any amounts improperly used to pay attorney fees and other costs in the Clean Harbors litigation.
- ◆ Within 90 days of the court’s order, Adams County shall provide both the court and CDPHE with an accounting of all funds improperly paid out of the § 25-15-214 fund for attorneys fees and other costs in the Clean Harbors litigation. This accounting shall demonstrate that all such amounts have been replaced to the fund.
- ◆ The court’s order does not resolve the issue of civil penalties, which was not raised by the parties in their cross-motions for summary judgment but is asserted in the complaint. Accordingly, the stay of discovery is lifted and the case shall proceed.

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

Advisory Committee on Medical Uses of Isotopes (ACMUI)

ACMUI Holds May Meeting

On May 7-9, 2009, the U.S. Nuclear Regulatory Commission's Advisory Committee on Medical Uses of Isotopes (ACMUI) met at the agency's headquarters in Rockville, Maryland. The ACMUI advises the NRC on policy and technical issues related to the regulation of medical uses of certain radioactive materials. Portions of ACMUI meetings may be open to the public.

During the course of the meeting, ACMUI members discussed, among other items, the National Council on Radiation Protection and Measurements Report 160 ("Ionizing Radiation Exposure of the Population of the United States") and its implications for NRC programs.

Committee members also discussed subcommittee reports on reportable events involving radioactive materials for medical uses; training and experience for the medical uses of yttrium-90 microspheres to fight liver cancer; and, a summary of the NRC's enforcement process and actions against medical licensees.

To access the transcript and written comments from the ACMUI web site, please go to <http://www.nrc.gov/about-nrc/regulatory/advisory/acmui.html>. For additional information on the open position, please contact Ashley Tull of the NRC at Ashley.Tull@nrc.gov or at (240) 888-7129.

Advisory Committee on Reactor Safeguards (ACRS)

ACRS Holds May and June 2009 Meetings

The U.S. Nuclear Regulatory Commission's Advisory Committee on Reactor Safeguards (ACRS) met on May 7-9, 2009—and then again on June 3-5, 2009—at the agency's headquarters in Rockville, Maryland. The ACRS 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.

The May meeting agenda included, among other things, a proposed rule on a risk-informed alternative to current requirements for plant emergency core cooling systems, proposed resolution of Generic Safety Issue (GSI) 163 titled "Multiple Steam Generator Tube Leakage," the draft final Regulatory Guide 1.214 titled "Response Procedures for Potential or Actual Aircraft Attacks," the Westinghouse AP1000 reactor design control document, and quality assessment of selected research projects.

The June meeting agenda included, among other things, the license renewal application and associated final safety evaluation report for the National Institute of Standards and Technology test reactor; a topical report associated with the U.S. Advanced Pressurized Water Reactor design; and draft regulatory guides on measuring radioactive materials in liquid and gaseous effluents and wastes, and on radiological environmental monitoring 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/2008/>. For additional information on ACRS meetings, please contact Antonio Dias at (301) 415-6805.

***Atomic Safety and Licensing Board
(ASLB)***

**Parties and Contentions
Admitted re Yucca Proceeding**

On May 11, 2009, the U.S. Nuclear Regulatory Commission's Atomic Safety and Licensing Boards (ASLBs) announced that a hearing has been granted on the Yucca Mountain license application—with eight petitioners admitted as parties and 229 contentions admitted on safety and environmental issues. The boards noted that an unusually high proportion of proposed contentions were admitted, but noted that many are identical or nearly identical, and are likely to be consolidated or grouped together to facilitate case management. Parties and petitioners have 10 days to appeal the boards' order, filed by another 10 days to reply to any appeals.

In the 153-page order, the ASLBs—designated as “construction authorization boards”—granted petitions to intervene filed by the States of Nevada and California; the Nuclear Energy Institute; Nye County, Nevada; Clark County, Nevada; White Pine County, Nevada; Inyo County, California; and a joint petition filed by Churchill, Esmeralda, Lander and Mineral counties in Nevada. The boards ruled that these petitioners demonstrated standing and raised at least one admissible contention regarding the application. Eureka and Lincoln counties in Nevada were granted status as interested governmental participants.

The boards rejected a petition filed by the Caliente Hot Springs Resort for failing to demonstrate standing. In addition, the Timbisha Shoshone Tribe and the Timbisha Shoshone Yucca Mountain Oversight Program (now acting jointly), as well as the Native Community Action Council, were not admitted at this time because they have not demonstrated full compliance with the NRC's Licensing Support Network (LSN)—an online database of documentation relating to the Yucca Mountain proceeding. These petitioners could be

admitted as parties at a later date if they demonstrate LSN compliance.

The U.S. Department of Energy submitted its application for the repository on June 3, 2008. (See *LLW Notes*, May/June 2008, pp. 35-36.) NRC staff docketed the application on September 8, 2008. A notice of opportunity to request a hearing was published in the *Federal Register* on October 22, 2008. Petitions were due in December 2008. Twelve petitions to intervene were filed, along with 318 proposed contentions. The construction authorization boards, each consisting of three judges, heard oral arguments on standing of the petitioners and admissibility of the contentions in Las Vegas from March 31 – April 2.

***Federal Emergency Management
Agency (FEMA)***

**FEMA & NRC Address
Emergency Preparedness**

The Federal Emergency Management Agency (FEMA) and the U.S. Nuclear Regulatory Commission (NRC) held six joint public meetings throughout June 2009 to provide a forum for the public to ask questions about proposed changes to emergency preparedness requirements for new and existing nuclear power plants, as well as research and test reactors. The meetings were held in Pennsylvania, Georgia, Illinois, Texas, Florida and Maryland. All sessions were open to the public and web cast.

FEMA is considering a related supplement to joint FEMA/NRC guidance that addresses criteria for preparing and evaluating emergency response plans for nuclear power plants. FEMA is also considering a revision of the Radiological Emergency Preparedness Manual.

NRC, on the other hand, is proposing a new regulation. Developed over many years and with

public input, the proposed NRC rule would limit the duties of a plant's on-site emergency responders to ensure they are not overburdened during an emergency event, and 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 security scenarios in their drills and exercises, which at present focus primarily on nuclear-safety-related scenarios. New requirements for back-up measures for altering and notification systems are also included in the proposed rule.

The specifics of the proposed rule were outlined in a *Federal Register* notice published on May 18, 2009, which can be found at <http://edocket.access.gpo.gov/2009/pdf/E9-10947.pdf>. After reviewing all public comments, NRC staff plans to submit a final proposed rule to the Commission in February 2010.

A full meeting notice can be found at <http://www.nrc.gov/public-involve/public-meetings/index.cfm>. All relevant documents can be found at <http://www.regulations.gov> (Docket Numbers NRC-2008-0122 and FEMA-2008-0022).

U.S. Nuclear Regulatory Commission (NRC)

NRC Considers Changes to Radiation Protection Regulations

The U.S. Nuclear Regulatory Commission is seeking public comment on regulatory issues and options for potential changes to the agency's radiation protection regulations. The agency is considering the changes in an effort to achieve greater alignment between the regulations and the 2007 recommendations of the International Commission on Radiological Protection (ICRP).

In an April 27 press release, NRC states that it "believes that the agency's current regulations continue to provide adequate protection of health and safety of workers, the public and the environment." The ICRP recommendations, according to NRC, "propose measures that go beyond what is needed to provide adequate protection." The Commission has, nonetheless, issued a Staff Requirements Memorandum (SRM) that directs NRC staff to engage stakeholders and interested parties on the benefits and burdens of any potential regulatory changes based on the ICRP recommendations. The SRM is dated April 2, 2009.

Over the next two to three years, NRC staff plans to use public comments to develop a technical basis for potential rulemaking, which will subsequently be presented to the Commission. While planning the technical basis, staff plans to consult with state regulatory agencies, the Conference of Radiation Control Program Directors, the Interagency Steering Committee on Radiation Standards, other federal agencies, and other organizations.

"The Commission is concerned about the potential impact of effectively lowering the occupational dose limit to 2 rem [from the current 5 rem] per year," the Commission said in the memo. "In developing the technical basis for rulemaking, the staff should examine how lower dose limits have affected the medical and industrial sectors in countries that have implemented them."

In SECY-08-0197, NRC staff outline possible changes to both material- and reactor-based radiation protection regulations. NRC is currently developing a dedicated Web site for public comments on this issue. In the meantime, comments may be submitted to Regs4RP@nrc.gov.

SECY-08-0197 is available on the NRC Web site at <http://www.nrc.gov/reading-rm/doc-collections/commission/secys/2008/secy2008-0197/2008-0197scy.pdf>. The Commission's SRM is available at <http://www.nrc.gov/reading-rm/doc-collections/commission/srm/2008/2008-0197srm.pdf>.

NRC Directs Enhanced Security of Cesium Chloride Sources

In mid-April 2009, the U.S. Nuclear Regulatory Commission directed agency staff to continue enhancing the security of cesium chloride radiation sources, while encouraging research and further technological developments for alternative chemical forms of cesium-137. In so doing, the Commission agreed with the staff's position in a paper presented last November that near-term replacement of cesium chloride sources in existing blood, research, and calibration irradiators is not practicable and would be harmful to the delivery of medical care, research and emergency response capabilities.

“Banning or phasing-out cesium chloride radiation sources at this time—before a replacement form or other technology is available—would be counterproductive, because society would lose the many benefits these sources provide in medicine, the industry and research,” said NRC Chairman Dale Klein.

The Commission noted that security controls already implemented over the past several years have significantly improved the security of these sources. However, it directed the staff to continue exploring new ways to improve their security further. Those efforts are to include working with federal and state agencies to define criteria for a “dispersible source of concern” that could then be used to guide research efforts to develop an alternative form of cesium. Staff was also directed to develop a Commission policy statement detailing the Commission's emphasis on security of cesium chloride sources.

Cesium chloride sources are widely used in irradiators to sterilize human blood, in bio-medical and industrial research, and for calibration of radiation instrumentation and dosimetry. They fall into the International Atomic Energy Agency's Categories 1 and 2, which the NRC considers to be

most sensitive from a security standpoint. Concerns over their security have led some people to advocate banning cesium chloride altogether.

Combined License Application Reviews Continue

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

- ♦ held public meetings to discuss environmental issues that the agency should consider in reviewing a COL application for a new reactor at the Nine Mile Point site near Oswego, New York; and,
- ♦ heard oral argument on a request for a hearing in the Fermi COL proceeding.

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

Additional information on the NRC's new reactor licensing process is available on the agency's web site at <http://www.nrc.gov/reactors/new-reactor-licensing.html>.

Nine Mile Point

On June 10, 2009, NRC staff conducted two sessions of a public meeting in Oswego, New York to discuss environmental issues that the agency should consider in reviewing a COL application for a new reactor at the Nine Mile Point site. The first session adhered to NRC's traditional format for a moderated, transcribed meeting to record public comments on the environmental review process. The second session utilized a less formal approach, giving the public a greater opportunity for one-on-one interaction with NRC staff. A court reporter recorded public comments during both sessions,

which will be included in a scoping summary report and addressed as staff prepares an environmental impact statement.

The applicant, UniStar, submitted the COL application and associated information on September 30, 2008. It seeks approval to build and operate an Evolutionary Power Reactor (EPR) at the site. On December 15, 2008, NRC announced that the agency had accepted the application for review and established docket number 52-038 therefore.

The application's environmental report may be found at <http://www.nrc.gov/reactors/new-reactors/col/nine-mile-point.html>.

Fermi

On May 5, 2009, an Atomic Safety and Licensing Board (ASLB) panel heard oral argument on a request for a hearing in the Fermi COL proceeding in Monroe, Michigan. The session was open to the public for observation, but participation was limited to the petitioners, applicant and NRC staff involved in the proceeding. The ASLB is the NRC's quasi-judicial arm dealing with licensing matters.

Detroit Edison submitted the COL application's safety report and associated information on September 18, 2008. The company is seeking approval to build and operate an Economic Simplified Boiling Water Reactor (ESBWR) at the site. A request to intervene in the proceeding was submitted by several individuals and public interest groups. The ASLB panel heard oral argument on the admissibility of some of the issues raised in this filing. The ASLB will determine, at a later date, whether a hearing should be granted.

Documents related to the Fermi COL application are available on the NRC's web site at <http://www.nrc.gov/reactors/new-reactors/col/fermi.html>. Documents pertaining to the ASLB proceeding are available in the agency's electronic document library at <http://www.nrc.gov/reading-rm/adams/web-based.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

- ◆ completed its final environmental impact statement for the Beaver Valley Power Station Units 1 and 2 nuclear power plants;
- ◆ announced the opportunity to request a hearing on an application to renew the operating license for the Palo Verde Nuclear Generating Station; and,
- ◆ issued a supplemental safety evaluation report for the license renewal application of the Vermont Yankee Nuclear Power Station near Brattleboro, Vermont.

Beaver Valley Nuclear Plant

On May 19, 2009, NRC announced that staff has completed its final environmental impact statement (EIS) for the Beaver Valley Power Station Units 1 and 2 nuclear power plants, and concluded that there are no environmental impacts that would preclude license renewal for an additional 20 years of operation.

Publication of the final EIS does not represent final NRC action on the license renewal application. The agency staff is completing its safety evaluation report, and the NRC's Advisory Committee on Reactor Safeguards will evaluate that report and make its recommendation before the agency makes a final decision.

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.

Federal Agencies and Committees *continued*

A copy of the Beaver Valley renewal application is available on the NRC web site at <http://www.nrc.gov/reactors/operating/licensing/renewal/applications.bvalley.html>. The final EIS can be found at <http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1437/supplement36/>.

Palo Verde Nuclear Generating Station

On May 20, 2009, NRC announced the opportunity to request a hearing on an application to renew the operating license for the Palo Verde Nuclear Generating Station for an additional 20 years. NRC's staff has determined that the application contains sufficient information for the agency to formally "docket," or file, the application and begin its safety and environmental reviews. Docketing the application does not preclude requesting additional information as the reviews proceed, nor does it indicate whether the Commission will renew the license. License renewal reviews typically take 22 months with no hearing, or 30 months if a hearing is granted.

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

Vermont Yankee Nuclear Plant

On May 21, 2009, NRC announced that it has issued a supplemental safety evaluation report for the license renewal application of the Vermont Yankee Nuclear Power Station near Brattleboro, Vermont.

NRC staff developed and published a safety evaluation report (SER) in May 2008. One of the staff's proposed license conditions in that SER required Entergy to perform fatigue analyses on

certain components no later than two years prior to entering the period of extended operation.

By letters dated January 15 and March 12, Entergy provided their additional confirmatory analysis of these components, including the reactor containment spray nozzle and the reactor pressure vessel recirculation outlet nozzle. NRC staff concluded that the confirmatory analyses of these components are consistent with the methods in the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code) and are acceptable.

The supplemental SER does not identify new open items. There are no new license conditions resulting from this supplement.

The Vermont Yankee plant is a boiling water reactor located in the town of Vernon, Vermont. Entergy Nuclear Operations, Inc. submitted a renewal application for the operating license of the plant on January 27, 2006. The current operating license expires on March 21, 2012.

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

NRC Regulations/Status of Renewals

Under NRC regulations, a nuclear power plant's original operating license may last up to 40 years. License renewal may then be granted for up to an additional 20 years, if NRC requirements are met. To date, NRC has approved license extension requests for 49 reactor units. In addition, NRC is currently processing license renewal requests for several other reactors.

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

NRC Issues SRM re LLRW Briefing

On May 1, 2009, the U.S. Nuclear Regulatory Commission released a Staff Requirements Memorandum (SRM) on a briefing on low-level radioactive waste management and related issues that was held before the Commission on April 17, 2009.

The SRM states, in part, as follows:

The staff should look for ways to more effectively communicate risk-informed concepts related to LLW in order to better educate the public. The staff should work with the OAS and the CRCPD to issue an information notice to remind licensees of their regulatory responsibilities regarding disposal of sources. The staff should work with CRSO, CORAR, and other stakeholders to develop a list or catalog of important research that has been impacted and/or stopped because of lack of disposal options for sources.

For additional information on the briefing—including a complete list of speakers, as well as excerpts of testimony and follow-up communication from the LLW Forum—please see the March/April 2009 issue of the LLW Notes.

An archived webcast of the briefing can be found at www.nrc.gov.

Background

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 Security 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 stakeholders panel (NEI, CRSO, CORAR, NIRS).

A Commission question and answer session followed each panel.

For additional information, please contact Patricia Swain of the NRC at (301) 415-5405.

NRC Hosts Fourth Annual Fuel Cycle Information Exchange

On June 23-25, 2009, the U.S. Nuclear Regulatory Commission hosted its fourth annual Fuel Cycle Information Exchange (FCIX) conference at the agency's headquarter's in Rockville, Maryland. The agency's Office of Nuclear Material Safety and Safeguards—which includes licensing, certification and inspection of nuclear facilities for uranium conversion and enrichment, as well as uranium/MOX fuel fabrication and processing. It provides an opportunity for NRC staff, industry representatives, licensees, certificate holders and other stakeholders to openly discuss regulatory issues of mutual interest, as they relate to the nuclear fuel cycle (with the exception of uranium recovery, reactor operations, and spent fuel transportation/disposal).

The theme for this year's FCIX conference was "The Nuclear Fuel Cycle: Building a Safe and Secure Future." Subjects that were addressed included preparing for domestic and international growth in the nuclear industry, improving regulatory oversight of fuel cycle facilities, enhancing security and safeguards measures, and developing a regulatory framework for the reprocessing of spent nuclear fuel. NRC Chairman Dale Klein addressed the conference on June 24.

For additional information, please go to <http://www.nrc.gov/public-involve/conference-symposia/fcix.html>.

To Obtain Federal Government Information

by telephone

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

by internet

- NRC Reference Library (NRC regulations, technical reports, information digests, and regulatory guides). www.nrc.gov
- EPA Listserve Network • Contact Lockheed Martin EPA Technical Support at (800) 334-2405 or e-mail (leave subject blank and type help in body of message). listserv@unixmail.rtpnc.epa.gov
- EPA • (for program information, publications, laws and regulations) www.epa.gov
- U.S. Government Printing Office (GPO) (for the Congressional Record, *Federal Register*, congressional bills and other documents, and access to more than 70 government databases). www.access.gpo.gov
- GAO homepage (access to reports and testimony) www.gao.gov

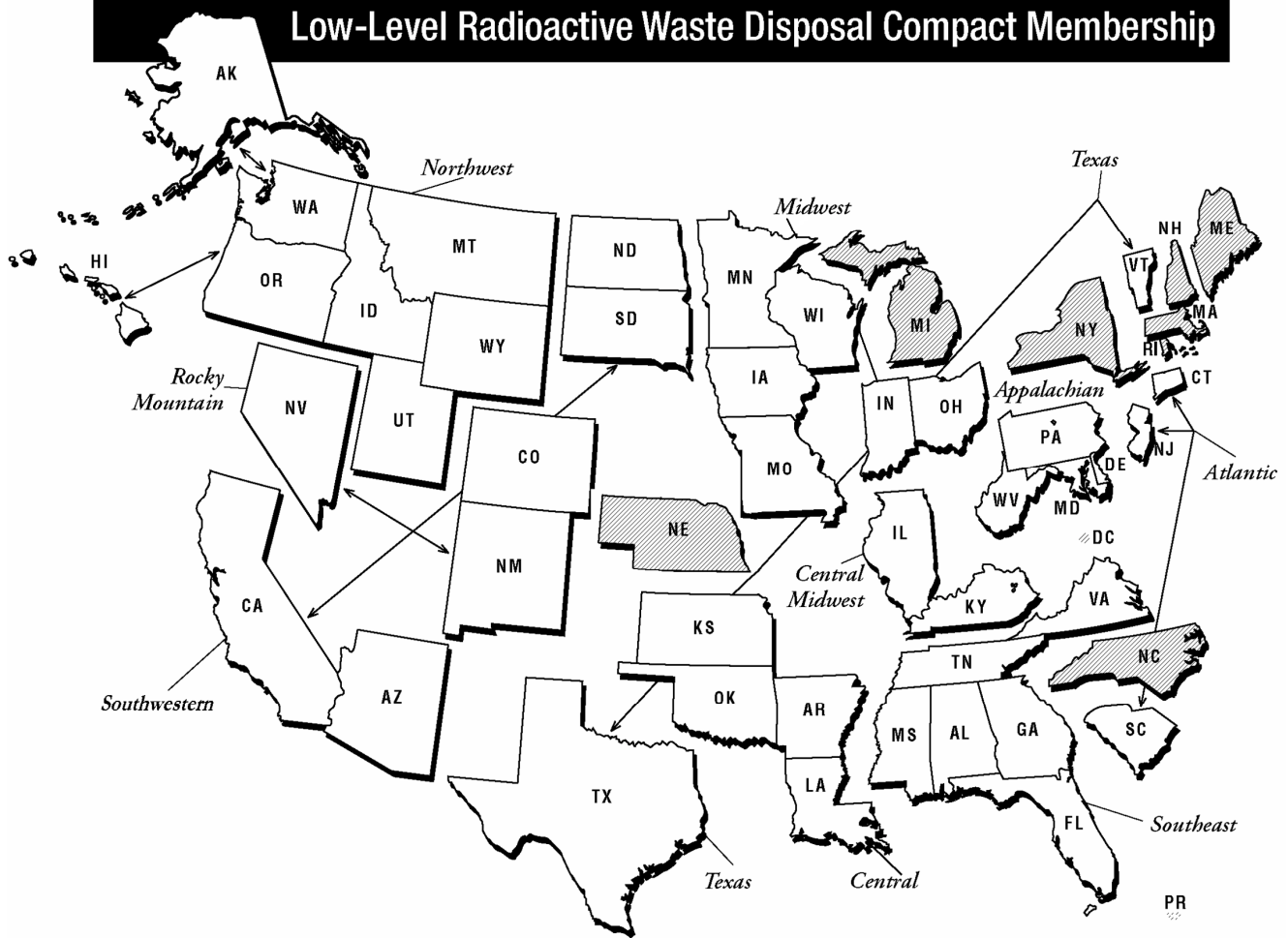
To access a variety of documents through numerous links, visit the web site for the LLW Forum, Inc. at www.llwforum.org

Accessing LLW Forum, Inc. Documents on the Web

LLW Notes, LLW Forum *Contact Information* and the *Summary Report: Low-Level Radioactive Waste Management Activities in the States and Compacts* are distributed to the Board of Directors of the LLW Forum, Inc. As of March 1998, *LLW Notes* and membership information are also available on the LLW Forum web site at www.llwforum.org. The *Summary Report* and accompanying Development Chart have been available on the LLW Forum web site since January 1997.

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

Low-Level Radioactive Waste Disposal Compact Membership



Appalachian Compact

Delaware
Maryland
Pennsylvania
West Virginia

Atlantic Compact

Connecticut
New Jersey
South Carolina

Central Compact

Arkansas
Kansas
Louisiana
Oklahoma

Central Midwest Compact

Illinois
Kentucky

Northwest Compact

Alaska
Hawaii
Idaho
Montana
Oregon
Utah
Washington
Wyoming

Midwest Compact

Indiana
Iowa
Minnesota
Missouri
Ohio
Wisconsin

Rocky Mountain Compact

Colorado
Nevada
New Mexico

Northwest accepts Rocky Mountain waste as agreed between compacts

Southeast Compact

Alabama
Florida
Georgia
Mississippi
Tennessee
Virginia

Southwestern Compact

Arizona
California
North Dakota
South Dakota

Texas Compact

Texas
Vermont

Unaffiliated States

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