

# LLW *notes*

Volume 24, Number 6 November/December 2009

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

### **NRC to Host Public Stakeholder Meeting re Blending of LLW**

***Separate Industry Meetings Held with  
EnergySolutions, Studsvik and Waste Control Specialists***

On November 30, 2009, the U.S. Nuclear Regulatory Commission put out a *Federal Register* notice (74 *Federal Register* 62,609) announcing plans to host a stakeholder meeting to solicit input on issues associated with the blending of low-level radioactive waste. The meeting, which will be open to the public, will be held in Rockville, Maryland on January 14, 2010.

In addition, on December 14 and 15, 2009, NRC hosted meetings to provide EnergySolutions, Studsvik and Waste Control Specialists LLC the opportunity to explain their views on the blending of low-level radioactive waste. The three industry meetings, which were open to the public, were held at the agency's headquarters in Rockville, Maryland.

#### **Stakeholder Meeting**

The purpose of the stakeholder meeting is to obtain additional information on blending and related issues in preparation for a vote paper that NRC staff is preparing for the Commission. (See "Background" section below.) Stakeholder views will be presented in the vote paper.

As background, the *Federal Register* notice announcing the meeting states as follows:

Since the closure of the LLRW disposal facility at Barnewell, South Carolina on June 30, 2008 to out-of-compact generators, the issue of blending of LLRW has received increased attention from stakeholders, industry, and Agreement States, especially blending that results in a change in the classification of the waste, as defined by the radionuclide concentrations in 10 CFR part 61.55. Blending, as defined here, refers to mixing of LLRW of different concentrations. It does not involve

*(Continued on page 24)*

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

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

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# Low-Level Radioactive Waste Forum, Inc.

## LLW Notes

Volume 24, Number 6 November/December 2009

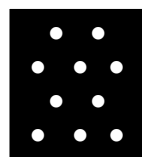
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<b>Key to Abbreviations</b>	
U.S. Department of Energy .....	DOE
U.S. Department of Transportation .....	DOT
U.S. Environmental Protection Agency .....	EPA
U.S. Government Accountability Office .....	GAO
U.S. Nuclear Regulatory Commission .....	NRC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

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

**Register Now: Spring 2010 LLW Forum Meeting  
Austin, Texas**

Registration continues for the spring 2010 meeting of the Low-Level Radioactive Waste Forum. The meeting—which is being co-hosted by the State of Texas and Waste Control Specialists LLC—will be held at the Omni Hotel in downtown Austin, Texas on March 22-23, 2010. (The Executive Committee will meet on Monday morning.)

*WCS has offered to provide a site tour for individuals interested in continuing on to the WCS facility in Andrews County after the conclusion of the LLW Forum meeting. (See box on next page for logistical details.) If interested, please take note and plan accordingly when making travel arrangements, as the travel to the WCS facility will require an additional flight segment or an approximately six hour drive in each direction.*

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

Persons who plan to attend the meeting are encouraged to make their hotel reservations and send in their registration forms as soon as possible as we have exceeded our block for the last few meetings. Once the block is full, the hotel may charge a higher rate. (The phone number for the Omni Austin Hotel is 512/476-3700. The web address is [www.omnihotels.com](http://www.omnihotels.com). Please ask for a room in the Low-Level Waste Forum block.)

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

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

## Optional WCS Site Tour

Persons interested in participating in the optional tour of the Waste Control Specialists' facility should contact Candance Greenwood of WCS at (575) 394-4300. Pre-registration for the site tour is required.

**Transportation** To attend the site tour, you will need to travel to Midland, Texas immediately following the conclusion of the LLW Forum meeting on Tuesday afternoon, March 23. The LLW Forum meeting will conclude no later than 1:00 PM. Airlines that service Midland International Airport are American Eagle, Continental Express, and Southwest Airlines.

**Hotel Accommodations** WCS has arranged for a group rate of \$99.00/night at the Holiday Inn Express, which is located approximately 40 miles from the airport at:

Holiday Inn Express  
1100 SOUTH MAIN  
ANDREWS, TX 79714  
(432) 524-4800

To obtain the group rate, please contact the hotel directly and ask for a room in the Waste Control Specialists site tour block.

**Tentative Schedule** The following is a tentative schedule for the site tour:

### Tuesday (March 23rd)

- Flights from Austin to Midland arrive at ~6:30 PM and 8:05 PM (Southwest) or 9:30 PM (American)
- On your own transportation to Andrews Holiday Inn Express

### Wednesday (March 24th)

- WCS bus/vans pick up in Andrews at 8:00 AM
- Drive to site and process visitors to start tour at 9:00 AM
- Overview presentation/videos - 45 minutes
- Tour - 60 minutes
- Closing Q&A - 15 minutes
- Provide sack lunch for drive back to Andrews
- Arrive Holiday Inn Express at noon
- On your own transportation to Midland airport - arrive at 1:00 PM
- Optional Tour of Andrews - 30 minutes

**Additional Information** Please note that WCS asks for closed-toed shoes (no sandals) and jeans or slacks to be worn. There are no restrictions on cameras for this tour. You will need to bring a valid ID, such as a drivers license. WCS will e-mail their visitor information guide to all registered site tour attendees and ask you to complete the forms prior to coming on the tour to speed up the processing of visitors upon arrival.

## Low-Level Radioactive Waste Forum Meetings *2010 and Beyond*

The following information on future meetings of the Low-Level Radioactive Waste Forum is provided for planning purposes only. Please note that the information is subject to change.

*For the most up-to-date information, please see the LLW Forum's web site at [www.llwforum.org](http://www.llwforum.org).*

### **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. Registration for the meeting is now open. (See related story, this issue.)

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

### **2011 Meetings**

The Southeast Compact Commission for Low-Level Radioactive Waste Management has agreed

to host the spring 2011 meeting of the LLW Forum at a location to be determined. The Southeast Compact is working on securing a co-host for the meeting.

The Rocky Mountain Low-Level Radioactive Waste Board and the Midwest Interstate Low-Level Radioactive Waste Compact Commission will co-host the LLW Forum's fall 2011 meeting. The meeting is tentatively scheduled to be held in October in Santa Fe, New Mexico.

### **2012 Meetings and Beyond**

The Southwestern Low-Level Radioactive Waste Compact Commission and State of California will co-host the spring 2012 meeting of the LLW Forum. The meeting will be held at the Hyatt Regency San Francisco Airport Facility in Burlingame, California on April 24-25, 2012. The hotel—which is rated AAA Four Diamond Award Winning Service & Accommodations—has 24 hr complimentary shuttle service to and from the airport, as well as shuttle service from the hotel to the Bay Area Rapid Transit (BART) station.

The LLW Forum is currently seeking volunteers to host the other 2012 meeting and those thereafter. Although it may seem far off, substantial lead-time is needed to locate appropriate facilities.

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

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

## **Newberry Retires from South Carolina**

Effective December 2009, Bill Newberry has retired. Newberry was the Director of the Radioactive Waste Disposal Program at the Budget and Control Board of the State of South Carolina's Energy Office. He also served as the state's designated Alternate representative to the Low-Level Radioactive Waste Forum (LLW Forum) and was previously a member of the U.S. Department of Energy's National Low-Level Waste Program.

John Clark, Director of the South Carolina Energy Office, will continue to serve as the State of South Carolina's designated representative to the LLW Forum's Board of Directors. Allyn Powell will be Newberry's replacement as an Alternate contact for the State of South Carolina. Powell has staffed the House Ways and Means Committee for a number of years and comes with some background on Barnwell matters, as well as a Master's Degree in Physics.

*Clark can be reached at (803) 737-8039 or at [jclark@energy.sc.gov](mailto:jclark@energy.sc.gov). Powell can be reached at (803) 737-8304 or at [apowell@energy.sc.gov](mailto:apowell@energy.sc.gov).*

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

## **Romano Retires as American Ecology's CEO**

Effective December 31, 2009, Stephen Romano retired as the Chief Executive Officer of American Ecology Corporation. James Baumgardner has been appointed as the company's new CEO, effective January 1, 2010. Despite his retirement, Romano will continue to serve as Chairman of American Ecology's Board of Directors.

Romano, who has served as CEO of American Ecology for the past eight years, has been a long-time member and supporter of the Low-Level Radioactive Waste Forum, Inc. Baumgardner, who worked for SECOR International from 2006 to 2008, rejoined American Ecology in 2009 as President and Chief Operating Officer in charge of disposal facility operations, sales and marketing, and management of strategic acquisitions. He had served as American Ecology's Senior Vice President and Chief Financial Officer from 1999 to 2006 and worked closely with Romano on the acquisition of American Ecology's Grand View, Idaho operation.

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

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

## **Public Comment Sought re Clive DU Amendment**

The Utah Department of Environmental Quality is accepting public comment on a proposed amendment (Proposed License Condition No. 35) to the low-level radioactive waste disposal license (RML UT2300249) for the Clive facility.

The amendment proposes to impose certain requirements regarding the receipt and disposal of depleted uranium (DU) at the Clive facility.

### **Background**

In September 2009, the U.S. Nuclear Regulatory Commission announced plans “to conduct two public workshops to solicit public input on major issues associated with a potential rulemaking for land disposal of unique waste streams including, but not limited to, significant quantities of depleted uranium in near-surface radioactive waste disposal facilities.” (See *74 Federal Register* 30,175 June 24, 2009.) NRC has stated that new regulatory standards and guidance will likely be the result of this rulemaking process, and that new performance assessments will likely also be required. (See *LLW Notes*, July/August 2009, pp. 1, 27-28.) In response, the Utah Division of Radiation Control (DRC) has stated that it will likely initiate a rulemaking of its own after completion of the NRC process.

*EnergySolutions* has indicated to DRC that it would prefer not to wait until completion of the resulting performance analysis that will likely be required before it begins to dispose of DU at the Clive facility. Accordingly, the proposed license amendment is required to allow such disposal in the interim.

### **Content**

The proposed license amendment states that “[t]he Licensee shall place all wastes with DU concentrations greater than 5 percent (by weight) a minimum of 10 feet below the top of the cover.” It also requires that *EnergySolutions* submit a performance assessment, in general conformance with the approach used by NRC in SECY-08-0147, for Executive Secretary review and approval no later than December 31, 2010. The compliance period for the performance assessment is listed as 10,000 years, although additional simulations will be performed for a 1,000,000-year time frame for qualitative analysis. The performance assessment is to be revised on an as-needed basis in order to reflect ongoing guidance and rulemaking from the NRC.

If the performance assessment indicates that changes to disposal operations and design are necessary, then *EnergySolutions* must provide a revised design that meets the requirements of 10 CFR Part 61 or Utah Administrative Code R313 for all wastes that have been and are reasonably anticipated to be disposed of at the facility. Such submission must be made within 180 days of Executive Secretary approval of the performance assessment.

The proposed license amendment further states as follows:

If following the completion of NRC’s and DRC’s regulatory processes ..., the disposal of DU as performed after the date of this license condition would not have met the requirements of those new regulatory and performance standards, the facility will undertake remediation to ensure that those new regulatory and performance standards are met, or if that is not possible, shall remove the DU and transport it off-site to a licensed facility.

*EnergySolutions* is required to fund the surety for the above-identified remediation by submitting,



## States and Compacts *continued*

within 30 days of the effective date of the license condition, cost estimates for remediation of existing Savannah River DU waste disposal and planned, similar large quantity DU waste disposal.

### Public Comment

A notice of the proposed license amendment was published in various local news media on November 23, 2009. Written comments will be accepted until the close of business on December 23, 2009.

*For additional information, please go to <http://www.radiationcontrol.utah.gov/> or contact Dane Finerfrock of the Utah Division of Radiation Control at (801) 536-4250 or at [dfinerfrock@utah.gov](mailto:dfinerfrock@utah.gov).*

## EnergySolutions Announces New CFO

On November 30, 2009, EnergySolutions announced the resignation of Philip Strawbridge as the company's Chief Financial Officer. The resignation of Strawbridge, who is leaving to pursue personal business interests, becomes effective as of December 31, 2009. Strawbridge played a key role in EnergySolutions' initial public offering and has been instrumental in integrating the nine companies acquired by EnergySolutions since 2005. Mark McBride, the company's current Senior Vice President and Corporate Controller, will succeed Strawbridge as EnergySolutions' new Chief Financial Officer.

"Phillip brought a wealth of nuclear industry experience to the executive management group and has provided expert guidance and judgment in the critical early years of the company," stated Steve Creamer, Chief Executive Officer and Chairman of EnergySolutions. "We have great confidence in Mark, who has been heavily involved with all financial matters for the company and has been primarily responsible for

EnergySolutions' accounting and financial reporting activities as a publicly traded company."

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

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

## Sinclair Retires from Utah DEQ

Effective December 10, 2009, Bill Sinclair has retired. Sinclair was the Deputy Director of the Utah Department of Environmental Quality (DEQ) and served as the state's designated representative to the Northwest Interstate Compact on Low-Level Radioactive Waste Management. He was also the state's designated representative to the Low-Level Radioactive Waste Forum (LLW Forum)—for which he previously served as both an officer and Chair of the organization.

The State of Utah has designated Dane Finerfrock as its new appointee to the LLW Forum's Board of Directors. Finerfrock is the Director of the DEQ's Division of Radiation Control. Brad Johnson (who has replaced Sinclair as the DEQ's Deputy Director) and Craig Jones (who is the Manager of the X-Ray and Radioactive Materials Section at the DEQ's Division of Radiation Control) will serve as the state's Alternates on the LLW Forum's Board of Directors.

*Finerfrock can be reached at (801) 536-4257 or at [dfinerfrock@utah.gov](mailto:dfinerfrock@utah.gov). Johnson may be reached at (801) 536-4405 or at [btjohnson@utah.gov](mailto:btjohnson@utah.gov). Jones can be reached at (801) 536-4264 or at [cwjones@utah.gov](mailto:cwjones@utah.gov).*

## ***Southeast Compact***

### **Southeast Compact to Host Teleconference Meeting**

The Southeast Compact Commission for Low-Level Radioactive Waste Management (the “Commission”) will hold a meeting on January 12, 2010. The 93<sup>rd</sup> meeting of the Commission—which will begin at 4:00 pm EST—will be held by teleconference.

The Commission will be called into Executive Session to be briefed by legal counsel with regard to oral arguments in its lawsuit against the State of North Carolina that will occur the day before the Commission’s meeting. (See related story, this issue.) The action seeks the enforcement of sanctions against the state for its alleged failure to develop a regional low-level radioactive waste disposal facility.

Following the Executive Session, the Commission will discuss other business that may come before it. All committee and commission meetings are open to the public, except when the Commission goes into Executive Session to discuss legal, financial or other proprietary information.

*For additional information and to obtain a copy of the draft meeting agenda, please contact the Commission at (919) 821-0500 or at [secc@secompact.org](mailto:secc@secompact.org).*

## ***Texas Compact***

### **Activities Update for the Texas Compact**

#### **New Web Site and E-Mail Addresses**

On September 2, 2009, the Texas Low-Level Radioactive Waste Disposal Compact Commission announced the following updates regarding the establishment of a new web site, new e-mail addresses, mailing address and phone information, publication of the volume rule and scheduling of a stakeholder meeting on import and export issues:

#### **New Web Site**

The compact commission’s new web site is now on-line. In the future, the compact commission plans to add audio files of meetings to the site, as well as meeting announcements and other activities. The site may also be used to send a message to the compact commission.

*The web site may be found at <http://www.tllrwdcc.org/>.*

#### **New E-Mail Addresses**

As of August 31, the compact commission’s Interim Executive Director has a new e-mail address—which is [margaret.henderson@tllrwdcc.org](mailto:margaret.henderson@tllrwdcc.org). (The only difference from the old address is the period between the first and last name.) Messages to the old address have been bouncing back, as the “redirect” was not working properly. Accordingly, the compact commission requests that any e-mail communications sent on or after August 31 be re-sent to ensure their proper delivery and receipt.

*New addresses for the commissioner’s will be announced shortly.*

### Mailing Address and Phone

The mailing address and phone number for the compact commission are as follows:

Texas Low-Level Radioactive Waste Disposal  
Compact Commission  
Margaret Henderson, Interim Executive Director  
3616 Far West Blvd., Ste. 117, # 294  
Austin, Texas 78731  
(970) 519-1588

*Please note that this is a mailing address only and not the physical location of the Commission.*

### Volume Rule

The "volume" rule was filed with the Texas Secretary of State for final adoption. The rule became effective September 20, 2009—in advance of the statutory deadline. The rule was published in the *Texas Register* on September 11, 2009.

The text of the rule is as follows:

*31 TAC 675.1. 1995 - 2045 Waste Disposal Volume Estimate.*

*The Commission estimates that Texas will dispose of Five Million (5,000,000) Cubic Feet of Low Level Radioactive Waste at a Compact disposal site to be established in Texas during the period from 1995 – 2045.*

### Import/Export Issues

At its August meeting, the compact commission deferred proposal of a new Rule 675.2 to be captioned "Exportation of Waste to a Non-Party State," to be contained in Chapter 675, Part 21, Title 31, Texas Administrative Code. The compact commission did, however, approve export petitions for Luminant Generation Company LLC, Vermont Yankee Nuclear Power Station, SPT Nuclear Operating Company, and Texas A&M University. The order approving the

petitions states as follows: "Granting of this order does not preclude the Commission's consideration of the imposition of export fees at a future date, which fees might be applicable to the disposal of waste under this order."

The compact commission plans to hold another stakeholder meeting to solicit input on import and export issues. A date and location has not been selected as of yet, but will be announced as soon as it is known via an announcement published in the *Texas Register* and sent to the interested

## Texas Compact Gets Funding to Resume Work

On November 9, 2009, the Texas Low Level Radioactive Waste Disposal Compact Commission announced the receipt of funding from the states of Texas and Vermont that will allow the compact commission to resume work immediately.

### Upcoming Events

The Texas Compact Commission met on December 10-11, 2009. During the meeting, among other things, the compact commission reviewed and considered export petitions, as well as considered the promulgation of rules for the export and import of waste and the collection of fees associated with those activities.

In addition, the compact commission hosted a stakeholder meeting in conjunction with the compact commission meeting in an effort to gather input on these proposed rules.

### Background

**Volume Rule** The Texas Compact Commission previously filed a "volume" rule with the Texas Secretary of State. The rule became effective

September 20, 2009—in advance of the statutory deadline. The rule was published in the *Texas Register* on September 11, 2009.

The text of the rule is as follows:

*31 TAC 675.1. 1995 - 2045 Waste Disposal Volume Estimate.*

*The Commission estimates that Texas will dispose of Five Million (5,000,000) Cubic Feet of Low Level Radioactive Waste at a Compact disposal site to be established in Texas during the period from 1995 – 2045.*

**Export of Waste** At its August 2009 meeting, the compact commission deferred proposal of a new Rule 675.2 to be captioned “Exportation of Waste to a Non-Party State,” to be contained in Chapter 675, Part 21, Title 31, Texas Administrative Code.

The compact commission did, however, approve export petitions for Luminant Generation Company LLC, Vermont Yankee Nuclear Power Station, SPT Nuclear Operating Company, and Texas A&M University.

The order approving the petitions states as follows: “Granting of this order does not preclude the Commission’s consideration of the imposition of export fees at a future date, which fees might be applicable to the disposal of waste under this order.”

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

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

## **TCEQ’s Rate Setting Package Made Available**

On November 16, 2009, the Texas Commission on Environmental Quality (TCEQ) made available electronically the agency’s Rate Application Package that will be used in the rate setting process for Waste Control Specialists’ planned low-level radioactive waste disposal facility in Andrews County, Texas.

The Rate Application Package, which is being provided to all stakeholders and the public as an aid to understanding how the maximum disposal rates will be established, may be found at <http://www.tceq.state.tx.us/goto/rates>.

### **The Rate Application Package**

TCEQ is charged with establishing waste disposal fees by rule for the Texas Low-Level Radioactive Waste Disposal Compact. The agency has adopted rules for the process of establishing initial maximum disposal rates and for revisions to those initial rates. The applicant’s submission and TCEQ review of a disposal rate application will help ensure that there is an open and equitable allocation of disposal costs.

The Rate Application Package includes a series of interactive spreadsheets. The costs and revenue requirements will be entered in the Rate Application Package and then summarized in an embedded worksheet that will be used to help determine recommended initial maximum disposal rates.

Additional rate-setting application materials must also be submitted as part of the rate application package as required in Title 30 Texas Administrative Code (TAC) Chapters 336 (Radioactive Substance Rules) and 37 (Financial Assurance) to address technical requirements, as

needed. The requirements and instructions for completing the rate application package are found as buttons on the individual worksheets of the Rate Application Package. Also provided are flowcharts that illustrate the process for establishment of the maximum disposal rate for waste generators in accordance with Title 30 Texas Administrative Code (TAC) Chapter 336, Subchapter N, "Fees for Low-Level Radioactive Waste Disposal."

*For additional information, please contact Sage Chandrasoma of the TCEQ Radioactive Materials Division at (512) 239-6096 or at [schandra@tceq.state.tx.us](mailto:schandra@tceq.state.tx.us).*

### **License Application Status**

On January 14, 2009, by a vote of 2 to 0, 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.) Following the completion of condemnation proceedings and the acquisition of underlying mineral rights, TCEQ's Executive Director signed the final license on September 10, 2009. (See *LLW Notes*, September/October 2009, pp. 1, 12-13.) Facility construction may not commence, however, until certain pre-construction requirements have been fulfilled and the TCEQ Executive Director has granted written approval.

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

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

*For additional information on WCS license application, please go to the TCEQ web page at [http://www.tceq.state.tx.us/permitting/radmat/licensing/wcs\\_license\\_app.html](http://www.tceq.state.tx.us/permitting/radmat/licensing/wcs_license_app.html) or contact the Radioactive Materials Division at (512) 239-6466. You may also go to the WCS web site at <http://www.wcstexas.com> or contact Chuck McDonald of WCS at (512) 708-8655.*

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## **Companies Receive NRC Response re LLW Blending**

By letters dated October 30, 2009, the U.S. Nuclear Regulatory Commission responded to correspondence from Studsvik and Waste Control Specialists LLC on various issues, including the blending of low-level radioactive waste. NRC had earlier responded to similar correspondence from EnergySolutions by letter dated August 27, 2009. (See *LLW Notes*, September/October 2009, pp. 29-30.)

In the responses, NRC summarized the agency's current regulations and staff guidance on blending. The correspondence also provides staff's analysis of specific comments submitted by Studsvik and WCS and references the upcoming vote paper on this issue that staff is preparing for Commission consideration. (See *LLW Notes*, September/October 2009, pp. 28-33.)

Blending refers to the mixing of different concentrations of low-level waste, but generally does not involve the mixing together of radioactive and non-radioactive waste. Furthermore, blending concerns only waste for disposal or storage, not for release.

### ***NRC's Correspondence***

**General Overview** In its responses to both Studsvik and WCS, NRC summarizes current

## States and Compacts *continued*

regulations and staff guidance on the issue of blending by stating as follows:

- ◆ Blending is not prohibited nor explicitly addressed in NRC regulations.
- ◆ While the staff has stated that wastes should not be mixed *solely* to lower the waste classification, NRC guidance acknowledges that blending, including some blending that may lower the waste classification, may be appropriate under certain circumstances.
- ◆ Waste classification is related to the safety of the disposed waste, and NRC regulations do not require waste to be classified prior to its shipment for disposal.
- ◆ The acceptability of any specific blending proposal would have to be evaluated by the appropriate regulatory authority, and NRC's guidance would be one way for a licensee to demonstrate compliance with regulations. Other approaches may also be found acceptable.

Both letters note that, in October 2009, Chairman Jaczko directed staff to prepare a vote paper on blending for Commission consideration. (See *LLW Notes*, September/October 2009, pp. 28-29.) Among other things, the paper will address any policy issues associated with blending. "Because of the significant stakeholder interest in this topic, we will seek stakeholder input on blending before the paper is completed," writes NRC, "as well as consider the views already expressed by stakeholders ... [including EnergySolutions, Studsvik and WCS] on this topic."

**Analysis of Studsvik Comments** *The following are excerpts from NRC staff's analysis of comments submitted by Studsvik. Persons interested in a complete review of the comments and analysis are directed to the letter itself.*

Studsvik Comment: *NRC regulations and BTP clearly spell out NRC's existing policy that waste*

*streams may not be mixed solely to reduce the resulting waste classification.*

NRC Response: NRC regulations do not prohibit blending nor is it explicitly addressed in the regulations. With respect to the staff guidance in the Concentration Averaging Branch Technical Position (CA BTP), a comment resolution appendix to that document states that mixing should not be undertaken *solely* to lower the classification of any specific waste in a disposal container. Section 3.1 of the CA BTP notes that there may be other reasons for mixing waste, stating that a collection of homogeneous wastes, for the purposes of operational efficiency or worker dose reductions, is not considered mixing for the purposes of the position. The CA BTP recommends constraints on mixing, but homogeneous wastes collected in a licensee's facility for the above reasons are not subject to these constraints.

Studsvik Comment: *Large scale blending by a third party is outside the scope of the BTP.*

NRC Response: The BTP does not address, except as noted above, the scope of blending by licensees. Current industry proposals, however, seek to expand the historical practice of blending. The staff will address this change in a vote paper for the Commission.

Studsvik Comment: *The Commission must consider the effect of any policy changes in light of State and compact statutes, rules, regulations, and policies, particularly in those States and compacts with disposal sites. See Texas rule prohibiting dilution and Utah rule prohibiting B/C disposal.*

NRC Response: The staff will inform the Commission of these factors in any policy deliberations. The staff is aware of the Texas regulation that prohibits dilution that reduces the waste class ... It is not clear whether the term "dilution" means mixing of waste with clean material (which NRC staff defines as dilution) or

## States and Compacts *continued*

mixing of waste with waste (which NRC staff defines as blending). Staff will obtain clarification from the Texas Commission on Environmental Quality in considering impacts on Agreement States of any new positions on blending. With respect to the Utah rule, Class A waste that has been blended from Class B/C concentrations is Class A waste. The concentration of waste at intermediate points in its processing does not affect the waste classification for disposal. There is no license application pending for Class B/C disposal in Utah.

*Studsvik Comment: There is no disposal site that can accept blended waste in the U.S. so a change in NRC's policy makes no practical sense. A regulation is pending before the Utah Radiation Control Board that will clarify the intent of State law to prohibit blending that changes waste class. Blending would also violate an agreement between the company and Governor. Texas regulations also prohibit blending.*

NRC Response: Our letter simply addresses what the NRC regulations and guidance state regarding blending, and notes that States have authority to deal with it under the Agreement State program. The EnergySolutions disposal license posted online states that the CA BTP may be used and that Class A waste is acceptable for disposal. The staff is following the petition for rulemaking in Utah. As noted earlier, the Texas regulation prohibits dilution to reduce the concentration of radioactive constituents to meet exemption levels or change the waste's classification or disposal requirements. Again, it is not clear whether the term "dilution" means mixing waste with clean material or mixing waste with waste.

*Studsvik Comment: Blending down to Class A waste doesn't eliminate the fact that this is Class B/C waste being disposed of. Therefore, there are negative environmental or safety consequences.*

NRC Response: The waste classification is defined by the concentrations of radionuclides at the time of disposal. If waste is disposed that

meets the concentration limits for Class A, then it is Class A waste. A licensee receiving such waste should evaluate the safety and environmental impacts to ensure that the performance objectives in the disposal regulations are still met.

*Studsvik Comment: Blending will substantially increase the amount of radioactivity present in Class A waste.*

NRC Response: Blending of B/C waste concentrations would increase the amount of radioactivity disposed of as Class A waste. The extent of the increase would depend on the extent of blending.

**Analysis of WCS Comments** The following are excerpts from NRC staff's analysis of comments submitted by WCS. Persons interested in a complete review of the comments and analysis are directed to the letter itself.

*WCS Comment: NRC's August 27, 2009, letter to EnergySolutions implies that blending to lower the classification of LLW is now accepted. This is a significant departure from established policy. Before such a change is implemented, NRC should conduct a thorough and public review of the matter.*

NRC Response: Our August 27, 2009, letter summarizes NRC's current regulations and guidance on blending. Although the staff has made statements that recommend constraints on blending, the staff has also noted that blending is not prohibited by the regulations and NRC's guidance notes that blending to reduce waste classification is appropriate under some circumstances. Thus, there has been no change in policy ...

*WCS Comment: WCS is optimistic that its new disposal facility will be open for disposal of Class A, B, and C waste by non-regional generators, and if this occurs, waste generators across the country may again have continued access to a licensed disposal facility for such waste.*

## States and Compacts *continued*

*Management of waste could continue under the current regulatory framework and negate the need for radical changes in policy. If blending of B/C waste for disposal as Class A were permitted to become national policy, the economic viability of the WCS facility would be compromised. The Commission should evaluate the unintended and adverse consequences such a change could cause.*

**NRC Response:** NRC has not changed its positions on blending of LLW, which are contained in the Concentration Averaging Branch Technical Position (CA BTP). The Chairman has directed the staff to prepare a vote paper that addresses policy issues, among other topics. WCS's views on this issue will be provided by the staff to the Commission for its consideration.

**WCS Comment:** *The NRC's Branch Technical Position ("BTP") implements core principles [waste minimization, isolation and containment] by placing bounds on blending of waste streams. Under this policy, waste generators were allowed to mix homogeneous waste streams provided that the purpose was not to change the waste classification ...*

**NRC Response:** This statement is not a correct interpretation of the staff's position. While the CA BTP recommends certain constraints on blending, which have the effect of minimizing changes in waste classification, the regulations are silent with respect to blending. Further, the BTP does contemplate the mixing of waste to lower the classification under certain circumstances. NRC's October 16, 2006, letter to Alaron, a waste processor, noted that ... *if waste is mixed in accordance with the BTP, resulting changes in waste classification are acceptable.*" The CA BTP also discusses circumstances where blending is contemplated (when worker dose reductions or operational efficiencies can be achieved.)

**WCS Comment:** *Existing NRC policy, established in the BTP and reiterated and reinforced in numerous subsequent NRC pronouncements, prohibits blending/dilution of radioactive material*

*for the purpose of changing its waste classification.*

**NRC Response:** This statement is an incorrect interpretation of NRC guidance. First, current NRC staff guidance allows for blending to change the waste classification in certain circumstances. Second, NRC guidance cannot prohibit licensee actions, since guidance does not have the force of regulations. Third, NRC guidance does not have to be used by Agreement States in their regulatory program, unlike NRC regulations which are subject to Agreement State compatibility requirements. Almost all waste processing and disposal facilities are regulated by Agreement States in the U.S.

**WCS Comment:** *WCS therefore requests that ... any changes to the policy will be accomplished only through future rulemaking that would solicit and consider the views of the many affected stakeholders.*

**NRC Response:** Although the existing staff position allows for some blending to lower the waste class, the staff is preparing a vote paper for the Commission that will identify policy issues related to blending, as well as other issues. The staff expects to solicit the views of stakeholders before the completion of that paper and to identify those issues in the vote paper. The Commission will decide if a rulemaking is appropriate.

### **Background**

In 2007, NRC staff identified revision of the Branch Technical Position on Concentration Averaging and Encapsulation as one of seven high priority tasks in the agency's low-level radioactive waste strategic assessment. (See *LLW Notes*, November/December 2007, pp. 1, 20-23.)

In April 2009, at the request of NRC Commissioners, the agency hosted a briefing on low-level radioactive waste management and disposal at NRC headquarters in Rockville, Maryland. (See *LLW Notes*, March/April 2009, pp. 1, 30-31.)



Following the briefing, several interested stakeholders submitted comments to the Commission on various issues, including the blending of low-level radioactive waste. In particular, written comments were sent to NRC from EnergySolutions, Studsvik and Waste Control Specialists LLC. (See *LLW Notes*, September/October 2009, pp. 30-33.) The correspondences provide very different perspectives and analyses of the associated issues and highlight the strong opinions generated by this topic.

By letter dated August 27, 2009, NRC responded to comments on the issue of blending contained in EnergySolutions' correspondence. (See *LLW Notes*, September/October 2009, pp. 29-30.)

On October 8, 2009, NRC announced that Chairman Gregory Jaczko "has directed the agency staff to develop a vote paper for the Commission to consider issues related to blending of low-level waste." (See *LLW Notes*, September/October 2009, pp. 28-29.)

On December 14-15, 2009, NRC hosted meetings to provide EnergySolutions, Studsvik and WCS the opportunity to explain their views on the blending of low-level radioactive waste. In addition, NRC recently announced plans to host a stakeholder meeting to solicit input on issues associated with the blending of low-level radioactive waste. The meeting, which will be open to the public, will be held in Rockville, Maryland on January 14, 2010. (See related story, this issue.)

*For additional information on EnergySolutions' perspective, please contact Thomas Magette at (301) 957-3770 or at [temagette@energysolutions.com](mailto:temagette@energysolutions.com). For additional information on Studsvik's perspective, please contact Joseph DiCamillo at (312) 343-7808 or at [joseph.dicamillo@studsvik.com](mailto:joseph.dicamillo@studsvik.com). For additional information on WCS' perspective, please contact Scott Kirk at (972) 450-4233 or at [skirk@valhi.net](mailto:skirk@valhi.net).*

### South Carolina to Present State/Compact Views re Blending

At the request of the U.S. Nuclear Regulatory Commission, the Low-Level Radioactive Waste Forum has designated an official from South Carolina to present input from states and compacts at the agency's upcoming public meeting on the blending of low-level radioactive waste. Mark Yeager of the South Carolina Department of Health and Environmental Control will represent the states and compacts at NRC's meeting.

The meeting—which is scheduled for January 14, 2010—is intended to solicit input on issues associated with the blending of low-level radioactive waste for the development of a vote paper, which is expected to go before the Commission in April 2010. The meeting will be held in Rockville, Maryland. Various stakeholders and industry representatives have been invited to participate—including representatives from Waste Control Specialists, Studsvik, EnergySolutions, the Nuclear Energy Institute/Electric Power Research Institute, Organization of Agreement States, Nuclear Information and Resource Service (NIRS) and HEAL Utah. (See related story, this issue.)

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

## Arguments Scheduled in Suit re NW Compact Authority Over Clive

The United States Court of Appeals for the Tenth Circuit has scheduled oral arguments in a lawsuit challenging the Northwest Compact's authority to govern *EnergySolution's* low-level radioactive disposal site in Clive, Utah for January 14, 2010.

Oral arguments will begin at 8:30 am in the Byron White U.S. Courthouse, Courtroom I, in Denver, Colorado.

### Background

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

Among other things, *EnergySolutions* argues that (1) the Clive facility is not a “regional disposal facility” as defined by the LLRWPA and the Northwest Compact therefore lacks authority to restrict the flow of LLRW to the facility; (2) NRC's authority and responsibility for the regulation of the export and import of byproducts and nuclear materials preempt any attempt by the Northwest Compact to restrict or prevent the

importation of foreign waste to the Clive facility; and, (3) any effort by the Northwest Compact to restrict or prohibit the Clive facility from receiving foreign LLRW would amount to unauthorized discrimination against foreign commerce and would be prohibited by the dormant Commerce Clause of the U.S. Constitution.

The 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.)

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

to regulate the Richland facility operated by US Ecology—regardless of the origin of waste that is sent thereto.

Notice of appeal of the district court's decision was filed in June 2009, with the associated appellate briefs being filed between August through September. (See *LLW Notes*, September/October 2009, pp. 18-21.) Also in September, an Amicus Curiae Brief in support of all defendants-appellants and seeking reversal of the district court's decision was filed jointly by the Atlantic Interstate Low-Level Radioactive Waste Compact, Central Interstate Low-Level Radioactive Waste Compact, Central Midwest Interstate Low-Level Radioactive Waste Compact, Southeast Interstate Low-Level Radioactive Waste Compact, Texas Low-Level Radioactive Waste Disposal Compact, and the Council of State Governments. The Midwest Interstate Low-Level Radioactive Waste Management Commission and the State of New Mexico also filed two separate Amicus Curiae Briefs in support of the defendants-appellants. (See *LLW Notes*, September/October 2009, pp. 18-21.)

*For additional information, please contact Michael Garner, Executive Director of the Northwest Compact, at (360) 407-7102; Brad Johnson 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***

# **U.S. Supreme Court Schedules Oral Arguments in Southeast Compact Lawsuit**

On January 11, 2010, the U.S. Supreme Court will hear oral arguments in a lawsuit initiated by the Southeast Interstate Low-Level Radioactive Waste Management Commission ("the Commission") and several of its member states against the State of North Carolina. Attorneys for the plaintiffs and defendants, as well as the U.S. Solicitor General, will make presentations to the Court and answer questions from the Justices. After hearing the oral arguments, the Court is expected to issue a decision by the end of June 2010.

The action, which seeks the enforcement of sanctions against the state for its alleged failure to develop a regional low-level radioactive waste disposal facility, was filed before the Court via original jurisdiction on June 3, 2002. (See *LLW Notes*, May/June 2002, pp. 1, 11.) This past summer, several compacts jointly filed an Amicus Brief in support of the Commission with the Court. The Solicitor General also filed an Amicus Brief to address specific questions presented by the case. (See *LLW Notes*, July/August 2009, pp. 18-21.)

## **Background**

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

## Courts *continued*

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

In response, the Commission found North Carolina in breach of the Southeast Compact and imposed sanctions on North Carolina in the amount of approximately \$80 million. In the interim, North Carolina took action to withdraw from the Compact. Ultimately, the state refused to comply with the sanctions.

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

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

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

Earlier this year, the Special Master submitted a second report, with exceptions thereto being filed

by the parties, for the Court's consideration. (See *LLW Notes*, May/June 2009, pp. 25.) The 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.

In July 2009, several compacts—including the Rocky Mountain Low-Level Radioactive Waste Board, the Northwest Interstate Compact Committee on Low-Level Waste Management, the Central Interstate Low-Level Radioactive Waste Commission, and the Midwest Interstate Low-Level Radioactive Waste Commission—jointly filed an Amicus Brief in support of the Commission with the Court. That same month, the Solicitor General filed an Amicus Brief to address specific questions presented by the case.

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

## *U.S. House of Representatives*

# Foreign Waste Bill Clears Full House

## No Action Taken on Senate Version

On December 2, 2009, the full U.S. House of Representatives approved H.R. 515, the "Radioactive Import Deterrence Act." The bill—which was originally introduced by Representative Bart Gordon (D-TN)—proposes, among other things, to strip the U.S. Nuclear Regulatory Commission of its jurisdiction to authorize the importation of low-level radioactive waste.

Senator Alexander Lamar (R-TN) has introduced a companion bill, S. 232, in the U.S. Senate. On January 14, 2009, S. 232 was referred to the Senate Committee on Environment and Public Works. However, no further action has been taken on that piece of legislation to date.

### House Approval

The House approved H.R. 515 by a vote of 309 to 112 on a motion to suspend the rules and pass the bill as amended by the Subcommittee on Energy and the Environment. (See below for additional information.) The bill passed the House under an expedited procedure that requires approval by at least two thirds of House members present.

Forty minutes of floor debate preceded the vote by the House. Only five members of the House spoke during the debate. Sixty-two Republicans and 247 Democrats voted in favor of the legislation, while one Democrat joined 111 Republicans in voting against it.

### Committee Mark-Up

On November 19, 2009, the House Energy and Commerce Committee reported H.R. 515 favorably by a recorded vote of 34 to 12. The bill

was approved on a mostly party-line vote, with Democrats voting in favor of the bill and Republicans voting against it.

Republicans proposed an amendment that would, among other things, allow the importation of foreign nuclear waste as long as the U.S. Nuclear Regulatory Commission determines that there is adequate disposal capacity. The committee rejected the proposed amendment, however, by a recorded vote of 17 to 26.

*An archived video Web Cast of the committee's mark-up will eventually be available at <http://energycommerce.house.gov>. Windows Media Player is required to view the Web cast.*

### Subcommittee Mark-Up

On November 3, 2009, the Subcommittee on Energy and the Environment held a mark-up of H.R. 515. The mark-up began with opening statements by subcommittee members and others. Speaking in favor of the proposed bill were subcommittee Chairman Edward Markey (D-MA) and Representatives Doris Matsui (D-CA) and Jim Matheson (D-UT). Speaking in opposition to the proposed legislation were Representatives Fred Upton (R-MI) and Ed Whitfield (R-KY).

Following these opening statements, Chairman Markey offered a Manager's Amendment which simply alters the section of the Atomic Energy Act that would be amended by the legislation from that titled "Byproduct Material" (Chapter 8) to instead that titled "Miscellaneous" (Chapter 19). NRC staff recommended this minor technical change, according to Markey. Upon approval of the Manager's Amendment, the subcommittee determined to report H.R. 515 favorably to the full House Energy and Commerce Committee by a voice-vote with a recommendation for passage. The subcommittee authorized staff to make technical and conforming amendments, as necessary.

*An archived video Web Cast of the subcommittee's mark-up will eventually be available at <http://energycommerce.house.gov>.*

*Windows Media Player is required to view the Web cast.*

### **Subcommittee Hearing**

On October 16, 2009, the Subcommittee on Energy and the Environment held a hearing on the bill, as well as a proposal by EnergySolutions regarding the importation of waste from Italy. The hearing began with opening statements from subcommittee members, as well as Congressional members in attendance. Thereafter, testimony was provided by

- ◆ Leonard Slosky, Executive Director of the Rocky Mountain Board and Chair-Elect of the Low-Level Radioactive Waste Forum;
- ◆ Val Christensen, President of EnergySolutions; and,
- ◆ Margaret Doane, Director of NRC's Office of International Programs.

Slosky's testimony emphasized the importance of compacts' exclusionary authority—the authority of compact's to control what waste can be brought into and removed from the compact regions—and his concern over the impact of a recent district court's decision concerning the Northwest Compact's authority over the low-level radioactive waste disposal facility at Clive, Utah. In particular, Slosky testified that the court's ruling could eviscerate the entire compact system if allowed to stand.

Christensen, on the other hand, testified that the court's ruling is limited and “neither weakens nor undermines the compact system.” Christensen's testimony largely focused on remaining capacity at the Clive facility, which he believes to be sufficient, and the importance of allowing American companies to compete globally. Arguing that H.R. 515 is “unnecessary and problematic,” Christensen testified that the bill would prevent the United States from reasserting “its leadership role in the nuclear renaissance.”

Doane's testimony focused on NRC's regulatory framework and licensing requirements for the

importation of low-level radioactive waste, as well as the agency's role in determining whether or not such waste may be imported into the country. Doane provided information regarding prior applications and responses thereto, NRC's review of the Italian waste import application, and the agency's views on disposal capacity concerns.

Following testimony from each of the above individuals, subcommittee members and others in attendance asked questions and received responses prior to concluding the hearing.

*An archived video Web Cast of the subcommittee's hearing will eventually be available at <http://energycommerce.house.gov>. Windows Media Player is required to view the Web cast.*

### **The Proposed Legislation**

Gordon introduced his legislation on January 14, 2009. (See *LLW Notes*, January/February 2009, p. 17.) Gordon proposed similar legislation in 2008, but the bill never made it out of committee. H.R. 515 was referred to both the Committee on Energy and Commerce and the Committee on Ways and Means. Seventy-nine members co-sponsored the bill, including Utah Representatives Jim Matheson (D) and Jason Chaffetz (R).

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

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

In September 2009, in response to questioning during a television news conference, Utah Governor Gary Herbert indicated that he would support H.R. 515. “For me, it’s a capacity issue,” said Herbert. “I think the emphasis needs to be on the Congressmen to get that through. I know it’s been there for over a year, and they need to do what they need to do with their colleagues to get that passed.” Herbert’s spokesperson had previously indicated that the new Governor would not take a position on the proposed legislation.

*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.*

### **EnergySolutions’ Proposal**

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

### **Related Legal Proceedings**

On May 5, 2008, EnergySolutions filed a lawsuit that, among other things, challenges the Northwest Compact’s authority over the Clive facility. (See *LLW Notes*, May/June 2008, pp. 25-28.) Although the action was initially filed against the Northwest Compact and its Executive Director, Michael Garner, solely in his official capacity, the court subsequently granted unopposed motions by the State of Utah and the Rocky Mountain Compact to intervene in the

action as defendants. (See *LLW Notes*, September/October 2008, pp. 12-14.)

On May 15, 2009, the district court issued a ruling on the first count of the lawsuit. (See *LLW Notes*, May/June 2009, pp. 1, 20-25.) In short, the court ruled that, with regard to the importation of low-level radioactive waste from outside of the compact region, the Northwest Compact does not have the authority to restrict access to the Clive disposal facility. The court based this ruling on its finding that Clive is a private facility operating in interstate commerce that is not covered by the compact system—i.e., it is not a “regional disposal facility” as defined under federal law. The court further ruled, however, that the Northwest Compact has authority to regulate the disposal of low-level radioactive waste that is generated within the compact’s regional boundaries—including restricting disposal access for such waste to the Clive facility. Finally, the court’s ruling maintains the authority of the Northwest Compact to regulate the compact’s regional disposal facility—which is the Richland facility operated by US Ecology—regardless of the origin of waste that is sent thereto.

The court’s ruling is currently under appeal. (See *LLW Notes*, July/August 2009, pp. 21-23.) A hearing is scheduled for January 14, 2010. (See related story, this issue.)

*For additional information, please contact Michael Garner, Executive Director of the Northwest Compact, at (360) 407-7102; Brad Johnson, 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 Dan Shrum, Senior Vice President of Regulatory Compliance at EnergySolutions, at (801) 649-2000.*

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

## **ACRS Holds End of Year Meetings**

The U.S. Nuclear Regulatory Commission's Advisory Committee on Reactor Safeguards (ACRS) met on November 5-7, and then again on December 3-5, 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 November meeting agenda included, among other things, amendments to the AP1000 reactor design control document and cyber security programs for nuclear facilities. In addition, the Committee discussed the Advanced Boiling-Water Reactor design as applied to the South Texas Project combined license (COL) application and the NRC staff's plan for the STP COL application review.

The December meeting agenda included the license renewal application for the Prairie Island Nuclear Generating Plant; draft Regulatory Guide 1.205 on risk-informed, performance-based fire protection for existing light-water nuclear power plants; draft Regulatory Guide 1.15 on instrument sensing lines; and review of long-term core cooling approach for the economic simplified boiling water reactor design. In addition, the Committee met with the Commission to discuss inspections, test, analyses and acceptance criteria design acceptance closure process for new reactors; amendment to the AP1000 design control document; three-dimensional finite element analysis of the Oyster Creek nuclear plant's drywell shell; Beaver Valley nuclear

plant's containment liner corrosion; and cyber security programs for nuclear power plants.

*Complete agendas for ACRS meetings can be found on the NRC's web site at <http://www.nrc.gov/reading-rm/doc-collections/acrs/agenda/2009/>. For additional information on ACRS meetings, please contact Antonio Dias at (301) 415-6805.*

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*(Continued from page 1)*

mixing radioactive waste with non-radioactive waste, (i.e., dilution) and concerns only disposal in a licensed facility, not release of radioactivity to the general environment.

Blending is not prohibited or explicitly addressed in NRC regulations. In addition, while NRC staff guidance discourages blending in some circumstances, it also recognizes that some blending—including blending that lowers the classification of a waste—may be appropriate in others. However, the closure of the Barnwell facility to LLRW generators in 36 States means that there is no disposal option for Class B or C LLRW generated in these States; LLRW generators have been storing Class B and C LLRW onsite since the closure of Barnwell. The lack of a disposal pathway for Class B and C LLRW from these generators has increased interest in blending to reduce the radioactivity concentrations of wastes that might otherwise be classified as B or C waste. A disposal pathway exists for Class A waste, which means that Class A waste does not have to be stored at the licensees' sites. While some blending of LLRW resulting in reduced waste classification has



## Federal Agencies and Committees *continued*

occurred in the past, the scale of blending being considered since the closure of Barnwell is potentially much larger than current practice.

The stakeholder meeting will be held in the Georgetown Room of the Legacy Hotel and Meeting Centre from 8:00 am to 5:30 pm.

*A final agenda for the January 14 public meeting will be noticed no fewer than ten days prior to the meeting on the NRC's electronic public workshop schedule at <http://www.nrc.gov/public-involve/public-meetings/index.cfm>.*

*For further information on the meeting, please contact Brooke Traynham of NRC's Office of Federal and State Materials and Environmental Programs at (404) 729-3366 or at [Brooke.Traynham@nrc.gov](mailto:Brooke.Traynham@nrc.gov).*

### **Questions for Consideration**

The *Federal Register* notice includes the following 13 questions associated with the blending of low-level radioactive waste that results in lower waste classification of components of the mixture:

- 1. What safety and security considerations are associated with blending of LLRW, particularly large scale blending that result in a change in waste classification?*
- 2. What are the practical considerations in operating a facility that bear on blending of LLRW?*
- 3. What policy issues are raised by blending of LLRW that lowers the waste classification?*
- 4. What are the potential blending policies/positions that NRC could take and the advantages and disadvantages of each?*
- 5. How should NRC implement a position on blending of LLRW (i.e., by rulemaking, guidance, policy statement or other means)?*

- 6. If a rule were to be promulgated, what compatibility category should it be; i.e., how strictly must Agreement States follow any NRC rule?*
- 7. NRC regulations only require waste to be classified when it's ready for disposal. What advantages or disadvantages might there be to classifying it earlier?*
- 8. If blended waste could not be attributed to the original generator of the waste, what issues does this raise that NRC should address, if any?*
- 9. What would be a risk-informed, performance-based approach to addressing blending?*
- 10. Given that Agreement States are not required to adopt NRC's guidance on blending, how are different States addressing this issue? What are the advantages and disadvantages of these approaches?*
- 11. NRC is budgeting resources to initiate a long-term rulemaking to revise the waste classification system. How might alternative waste classification systems be affected by blending?*
- 12. What oversight might be needed to ensure that blending is performed appropriately?*
- 13. What other issues should NRC staff consider in developing options for Commission consideration related to blending?*

According to the notice, these questions are not meant to be a complete or final list, but rather are intended to initiate discussion.

### **Opportunity for Comment**

Members of the public may provide feedback at the transcribed stakeholder meeting. In the alternative, comments may be submitted in written or electronic form. To do so, please include Docket ID NRC-2009-0520 in the subject line. Please note that comments will be posted on NRC's web site and on the federal rulemaking

## Federal Agencies and Committees *continued*

web site at [Regulations.gov](http://Regulations.gov). The comments will not be edited to remove any identifying or contact information, so any persons submitting comments should use caution not to include information that they do not wish to be publicly disclosed. The deadline for submitting comments is January 29, 2010.

*Comments may be submitted using the federal rulemaking web site at <http://www.regulations.gov> by searching for documents filed under Docket ID NRC-2009-0520.*

*Comments may also be mailed to Michael T. Lesar, Chief, Rulemaking and Directives Branch (RDB), Division of Administrative Services, Office of Administration, Mail Stop: TWB-05-B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. In addition, comments may be faxed to the RDB at (301) 492-3446.*

### **Industry Meetings**

In April 2009, at the request of NRC Commissioners, the agency hosted a briefing on low-level radioactive waste management and disposal at NRC headquarters in Rockville, Maryland. (See *LLW Notes*, March/April 2009, pp. 1, 30-31.)

Following the briefing, several interested stakeholders submitted comments to the Commission on various issues, including the blending of low-level radioactive waste. In particular, written comments were sent to NRC from *EnergySolutions*, Studsvik and Waste Control Specialists LLC. (See *LLW Notes*, September/October 2009, pp. 30-33.)

The industry meetings were intended to provide each of the three companies with an opportunity to explain their views to NRC staff on the blending of low-level radioactive waste. The public was provided with an opportunity to participate in the meetings by discussing regulatory issues with the NRC at designated points identified on the agendas.

NRC met with WCS and Studsvik on December 14 in Room T-2B3 of Two White Flint North. The WCS meeting was scheduled from 9:00 am to 12:30 pm and the Studsvik meeting was scheduled from 1:30 pm to 5:00 pm. NRC then met with *EnergySolutions* at the same location on December 15 from 9:00 am to 12:30 pm.

*For additional information, please contact Maurice Heath of the NRC's Office of Federal and State Materials and Environmental Management Programs at (301) 415-3137 or at [Maurice.Heath@nrc.gov](mailto:Maurice.Heath@nrc.gov).*

### **Background**

On October 8, 2009, the NRC announced that Chairman Gregory Jaczko “has directed the agency staff to develop a vote paper for the Commission to consider issues related to blending of low-level waste.” In developing the vote paper, Chairman Jaczko directed the staff to specifically consider the following:

- ◆ issues related to intentional changes in waste classification due to blending—including safety, security, and policy considerations;
- ◆ protection of the public, the intruder, and the environment;
- ◆ mathematical concentration averaging and homogeneous physical mixing;
- ◆ practical considerations in operating a waste treatment facility, disposal facility, or other facilities—including the appropriate point at which waste should be classified; and,
- ◆ recommendations for revisions, if necessary, to existing regulations, requirements, guidance, or oversight related to the blending of low-level radioactive waste.

NRC expects to send the vote paper to the Commission in April of 2010.

*For additional information, see [LLW Notes](#), September/October 2009, pp. 28-29.*

### 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

- ◆ renewed the operating licenses for the Susquehanna Steam Electric Station, Units 1 and 2, in Salem Township, Pennsylvania for an additional 20 years;
- ◆ announced that it is seeking public comments on its preliminary conclusion that there are no environmental impacts that would preclude renewal of the operating licenses for the Prairie Island Nuclear Generating Plant Units 1 and 2 located 28 miles southeast of Minneapolis, Minnesota;
- ◆ renewed the operating licenses for the Beaver Valley Power Station, Units 1 and 2, in Shippingport (Beaver County), Pennsylvania for an additional 20 years;
- ◆ held a public meeting on November 5 to solicit public comments on possible environmental impacts of a proposed 20-year extension of the operating licenses for the Salem Nuclear Power Plant, Units 1 and 2;
- ◆ held a public meeting on November 5 to solicit public comments on possible environmental impacts of a proposed 20-year extension of the operating license for the Hope Creek Nuclear Power Plant; and,
- ◆ renewed the operating license for the Three Mile Island Nuclear Station, Unit 1 (TMI-1), in Middleton, Pennsylvania for an additional 20 years.

#### **Susquehanna Nuclear Power Plant**

On November 24, 2009, NRC announced that it had renewed the operating licenses for the

Susquehanna Steam Electric Station, Units 1 and 2, in Salem Township, Pennsylvania for an additional 20 years. The decision to renew the licenses was made after thorough safety and environmental reviews. The Susquehanna Steam Electric Station Units 1 and 2 are boiling water nuclear reactors.

PPL Susquehanna LLC submitted an application for extension of the licenses for each unit at the Susquehanna plant in September 2006. The current operating licenses for the plant—which is located in Salem Township about five miles northeast of Berwick, Pennsylvania—are due to expire on July 17, 2022 and on March 23, 2024.

*A copy of the Susquehanna SER can be found at <http://www.nrc.gov/reactors/operating/licensing/renewal/applications/susquehanna.html>.*

#### **Prairie Island**

On November 16, 2009, NRC announced that it is seeking public comments on its preliminary conclusion that there are no environmental impacts that would preclude renewal of the operating licenses for the Prairie Island Nuclear Generating Plant Units 1 and 2 located 28 miles southeast of Minneapolis, Minnesota. NRC staff reviewed the environmental report submitted by the licensee and performed an on-site audit before making its decision. Based on the review, NRC staff has preliminarily determined that the environmental impacts of the license renewal are not so great that they preclude it. The agency's draft supplemental environmental impact statement (EIS) is open for public comment until January 29, 2010, and will be the subject of two public meetings.

The plant is located in Welch, Minnesota. It's operator, Northern States Power Company, has applied for a 20-year license extension for each of the two units at the site. If approved, the expiration date for Unit 1 would be extended to August 9, 2033 and for Unit 2 would be extended to October 29, 2034.

## Federal Agencies and Committees *continued*

*A copy of the draft supplement to the EIS can be found on ADAMS using accession number ML0931703484 at <http://www.nrc.gov/reading-rm/adams.html>.*

### **Beaver Valley**

On November 5, 2009, NRC announced that the agency had renewed the operating licenses for the Beaver Valley Power Station, Units 1 and 2, in Shippingport (Beaver County), Pennsylvania for an additional 20 years. The decision to renew the licenses was made after thorough safety and environmental reviews of the application. The Beaver Valley plants are two pressurized-water nuclear reactors located 17 miles west of McCandless, Pennsylvania.

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

*A copy of the SER for Beaver Valley can be found on ADAMS using accession number ML091550506 at <http://www.nrc.gov/reading-rm/adams.html>.*

### **Salem Nuclear Generating Station**

On November 5, 2009, NRC held a public meeting to solicit public comments on possible environmental impacts of a proposed 20-year extension of the operating licenses for the Salem Nuclear Power Plant, Units 1 and 2. The session started with a brief overview of NRC's license renewal review process, with emphasis on the environmental evaluation portion of the process. Afterwards, audience members were provided an opportunity to offer comments on environmental issues they consider worthy of review. At the conclusion of the information-gathering process, NRC will prepare a summary of the conclusions reached and significant issues identified. Staff will subsequently prepare a draft environmental impact statement (EIS) supplement for public

comment and will hold public meetings to solicit comments. After consideration of comments on the draft report, NRC will prepare a final EIS supplement.

The Salem Nuclear Generating Station is located in Hancock Bridge, New Jersey. Both units are pressurized-water reactors. The current operating licenses expire on August 13, 2016 and on April 18, 2020. The licensee, PSEG Nuclear LLC, submitted the renewal applications on August 18, 2009.

*The Salem renewal application is posted on the NRC web site at <http://www.nrc.gov/reactors/operating/licensing/renewal/applications/salem.html>.*

### **Hope Creek Nuclear Generating Station**

On November 5, 2009, NRC held a public meeting to solicit public comments on possible environmental impacts of a proposed 20-year extension of the operating license for the Hope Creek Nuclear Power Plant. The session started with a brief overview of NRC's license renewal review process, with emphasis on the environmental evaluation portion of the process. Afterwards, audience members were provided an opportunity to offer comments on environmental issues they consider worthy of review. At the conclusion of the information-gathering process, NRC will prepare a summary of the conclusions reached and significant issues identified. Staff will subsequently prepare a draft environmental impact statement (EIS) supplement for public comment and will hold public meetings to solicit comments. After consideration of comments on the draft report, NRC will prepare a final EIS supplement.

The Hope Creek Nuclear Generating Station is located in Hancock Bridge, New Jersey. It is a boiling-water reactor. The current operating license expires on April 11, 2026. The licensee, PSEG Nuclear LLC, submitted the renewal application on August 18, 2009.

*The Hope Creek renewal application is posted on the NRC web site at <http://www.nrc.gov/reactors/operating/licensing/renewal/applications/hope-creek.html>.*

### **Three Mile Island**

On October 22, 2009, NRC announced that it had renewed the operating license for the Three Mile Island Nuclear Station, Unit 1 (TMI-1), in Middleton, Pennsylvania for an additional 20 years. The decision to renew the licenses was made after thorough safety and environmental reviews of the application. TMI-1 is a pressurized-water nuclear reactor located 10 miles southeast of Harrisburg, Pennsylvania.

NRC held public meetings near the plant to discuss TMI-1's environmental review on January 28, 2009. In June, NRC staff concluded there were no environmental impacts that would preclude renewal of the license for environmental reasons.

Exelon Generation Group LLC submitted the Three Mile Island application to NRC on January 8, 2008. The current operating license for TMI-1 expires on April 19, 2014.

*A copy of the SER can be found on ADAMS using accession number ML091660470 at <http://www.nrc.gov/reading-rm/adams.html>.*

### **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 59 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>.*

## **Safety Issues Identified re AP1000 Shield Building**

On October 15, 2009, the U.S. Nuclear Regulatory Commission announced that it had informed Westinghouse that the company has not demonstrated that certain structural components of the revised AP1000 shield building can withstand design basis load. In a letter to Westinghouse, the agency states that progress on the shield building review will require the company to provide modifications to the design, as well as testing that demonstrates that the building will perform its intended safety function under design basis loads. The staff will continue its review of the remainder of the AP1000 design certification amendment application.

As the name applies, the AP1000 shield building would protect the reactor's primary containment from severe weather and other events. The building's other functions would include providing a radiation barrier during normal operation and supporting an emergency cooling water tank.

"We've been talking to Westinghouse regularly about the shield building since October 2008, and we've consistently laid out our questions to the company," said Michael Johnson, Director of the NRC's Office of New Reactors. "This is a situation where fundamental engineering standards will have to be met before we can begin determining whether the shield building meets the agency's requirements."

The impact on the overall AP1000 certification review schedule will be established after the staff and Westinghouse discuss the company's plans to address the NRC's conclusions regarding the shield building design. The impact on related review schedules for Combined License applications referencing the AP1000 will be addressed once the design certification review schedule is better understood.

*NRC staff's letter to Westinghouse will be available on the agency's electronic documents database, ADAMS, by entering ML092320205 at <http://adamswebsearch.nrc.gov/dologin.html>.*

### Jaczko Statement re Upcoming Commission Schedule

On December 1, 2009, U.S. Nuclear Regulatory Commission Chairman Gregory Jaczko issued the following statement regarding the Commission's upcoming schedule:

*The Commission has established its tentative schedule for the first months of 2010 with the goal of continuing to ensure that our stakeholders are informed of, and involved in, the agency's activities and plans. The Commission is moving into the new year with a comprehensive meeting schedule, tackling diverse and timely issues as well as undertaking discussions to resolve several long-standing issues from the past.*

*The Commission is moving forward in our planning while not losing sight of where we have been, or the challenges that face us currently. I look forward to discussions about our anticipated activities, such as those in the area of uranium recovery, to make sure that our mission—for safety, security and protection of the environment—is being met. I'm also looking forward to discussions to help us close out long-standing generic safety issues, such as the GSI-191, which addresses sump performance issues. The meeting planned around current issues will provide an opportunity to engage stakeholders on such critical items as safety culture and ensuring adequate decommission funding.*

*I am looking forward to exploring these items with my Commission colleagues, the agency staff, and our stakeholders, as we move forward with the agency's business of protecting people and the environment.*

#### **Tentative Schedule:**

##### *January*

12: Briefing on the Office of Nuclear Security and Incident Response programs, performance and future plans

19: Briefing on the NRC Enforcement and Allegations Programs

26: Briefing on the Office of Nuclear Reactor Regulation programs, performance, and future plans

##### *February*

09: Briefing on NRC Regional Programs

18: Briefing on the Office of Nuclear Regulatory Research programs, performance, and future plans

23: Briefing on Decommissioning Funding for nuclear power plants

##### *March*

02: Briefing on uranium recovery

16: Joint Meeting of the Federal Energy Regulatory Commission (FERC) and the NRC on grid reliability

30: Briefing on Safety Culture

##### *April*

06: Periodic Briefing on New Reactor Issues – Design Certifications

15: Briefing on Resolution of Generic Safety Issue-191, Assessment of Debris Accumulation on Pressurized Water Reactor Sump Performance

29: Briefing on the Fuel Cycle Oversight Process Revisions

## NRC Cites Wal-Mart re Tritium Exit Signs

On October 28, 2009, the U.S. Nuclear Regulatory Commission announced that the agency has cited Wal-Mart Stores, Inc. with four violations concerning improper disposal and transfer of tritium exit signs at its stores throughout the United States and Puerto Rico. The violations concern the improper transfer or disposal of 2,462 signs from Wal-Mart stores in states under NRC jurisdiction between 2000 and 2008, and the improper transfer of an additional 517 signs between various Wal-Mart facilities. In addition, the company was cited for failing to appoint an official responsible for complying with regulatory requirements and for failing to report broken or damaged signs as required.

Exit signs containing tritium, a radioactive isotope of hydrogen, pose little threat to public health and safety and do not constitute a security risk. However, the NRC requires proper record keeping and disposal of the signs because a damaged or broken sign could cause minor radioactive contamination of the immediate vicinity, requiring environmental clean up.

The improper transfer or disposal of the 2,979 signs and failure to appoint a responsible official were determined to be a Severity Level III problem under NRC's enforcement policy. The failure to report damaged signs is a Severity Level IV violation—the lowest on NRC's enforcement scale. Although the Security Level III problem could have triggered a civil penalty, NRC exercised enforcement discretion and waived the monetary fine based on Wal-Mart's prompt, comprehensive, and extraordinary corrective and preventive actions. After discovering the problem, Wal-Mart applied considerable resources to correct the issues including inventorying all tritium exit signs at its stores nationwide, remediating contamination from damaged signs at several stores, and subsequently

removing all tritium exit signs in Wal-Mart facilities and replacing them with exit signs that do not contain radioactive material.

“Our inspection, and the extensive actions Wal-Mart had to undertake to resolve our concerns, should stand as a warning to other organizations and corporations not to be lax in their handling of devices containing radioactive material,” said Cynthia Carpenter, NRC's Director of Enforcement. “Because Wal-Mart realized it had problems and took significant and effective corrective actions, we believe it is appropriate not to impose a civil penalty in this case.”

NRC initiated a special inspection of Wal-Mart in December 2008 and concluded it in August of this year. NRC has also initiated a Demand for Information to more than 60 organizations and corporations known to possess large quantities of tritium exit signs, requesting they report to the NRC about their record keeping and accounting of their signs. The agency is reviewing information submitted in response to that Demand for Information and may initiate additional enforcement actions if warranted.

NRC has worked closely with its 37 Agreement States—which regulate commercial use of radioactive material—concerning the Wal-Mart inspection and Demand for Information to other organizations. Agreement States are responsible for any enforcement actions regarding tritium exit signs in their jurisdiction.

*The Wal-Mart inspection report is available in the NRC's ADAMS online document system at <http://www.nrc.gov/reading-rm/adams/web-based.html> by entering Accession Number ML092380657 in the search window. A press release about the Demand for Information is available at <http://www.nrc.gov/reading-rm/doc-collections/news/2009/09-011.html>.*

## NRC Issues FY 2009 Performance and Accountability Report

In November 2009, the U.S. Nuclear Regulatory Commission issued its Performance and Accountability Report for fiscal year 2009. The report shows that the agency—which serves the public by overseeing the civilian use and management of radioactive materials and nuclear fuel while protecting public health and safety and the environment, as well as promoting the security of the nation—has achieved its safety and security performance goals over the past 12 months. “This report clearly demonstrates that the NRC’s financial and performance data are reliable and relevant,” said Chairman Gregory Jaczko.

In FY 2009, the NRC continued to provide effective and efficient regulatory oversight of the nuclear industry, including the safe operation of 104 nuclear power plants, and the safe and secure use of nuclear materials. It continued its active review of 17 new applications for 26 reactors across the country.

The primary goal of the NRC is safety. The agency achieves this goal by ensuring the performance of licensees meets or exceeds acceptable safety levels. The NRC achieved its strategic outcomes by preventing the occurrence of any nuclear reactor accidents, inadvertent criticality events, acute radiation exposures resulting in fatalities, releases of radioactive materials that result in significant radiation exposures and releases of radioactive materials that cause significant adverse environmental impacts.

NRC remains vigilant in ensuring the security of nuclear facilities and materials in an elevated threat environment. The NRC achieved its strategic goal by preventing any instances of licensed radioactive materials being used

domestically in a manner hostile to the security of the United States.

NRC has made significant strides in improving its financial systems, business operations, and internal control program. The agency received an unqualified audit opinion on its FY 2009 Financial Statements, with no significant deficiencies or non-compliances with laws and regulations noted.

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

## Comment Sought on Draft Safety Culture Policy

The U.S. Nuclear Regulatory Commission has issued for public comment a draft policy statement on “safety culture,” including the Commission’s expectation that any NRC-regulated organization will establish and maintain a positive safety culture.

In a 1989 policy statement, the Commission addressed the safe conduct of nuclear power plant operations. The agency addressed a safety conscious work environment in a 1996 policy statement. After years of work in this area, and after the experience of incorporating aspects of safety culture into the Reactor Oversight Process effort, the Commission has approved issuing a draft policy statement that sets forth its expectation that all licensees and certificate holders establish and maintain a safety culture that protects public health and safety and the common defense and security. The draft policy defines safety culture as: “That assembly of characteristics, attitudes and behaviors in organizations and individuals which establishes that as an overriding priority, nuclear safety and security issues receive the attention warranted by their significance.”



A safety culture should include a work environment where personnel feel free to raise safety and security concerns without fearing retaliation, as well as prompt and thorough identification, evaluation and resolution of those concerns. The NRC is strongly committed to promoting a positive safety culture among the organizations it regulates.

NRC is interested in the public's comments in several areas, including:

- ◆ Does the draft policy's safety culture definition need further clarification?
- ◆ What specific safety culture characteristics relevant to particular types of NRC licensees should the draft policy address?
- ◆ What characteristics in the draft policy do not contribute to safety culture?
- ◆ How can the NRC better involve stakeholders in addressing safety culture?

NRC will accept comments on the changes until February 4, 2010, following publication of the draft safety culture policy statement in the *Federal Register* (<http://edocket.access.gpo.gov/2009/pdf/E9-26816.pdf>).

*Comments may be mailed to: Alexander Sapountzis, Office of Enforcement, Mail Stop 04 A15A, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. They may also be e-mailed to [Alexander.Sapountzis@nrc.gov](mailto:Alexander.Sapountzis@nrc.gov).*

## Criminal Penalties Imposed re Weapons at NRC-Licensed Facilities

On October 14, 2009, the U.S. Nuclear Regulatory Commission announced that it had issued a final rule that will make it a federal crime to introduce, without authorization, weapons or explosives into specified classes of facilities designated by the NRC. The Energy Policy Act of 2005 gave the NRC the ability to issue the regulation and to require that it be posted "conspicuously" at each affected location. The rule will go into effect in 180 days.

Previously, NRC could take action against its licensees for violation of security requirements resulting from the unlawful introduction of weapons onto the site, but the Department of Justice could not bring a criminal prosecution against the individual who brought the weapons on site without authorization. Instead, any criminal sanctions had to be sought by the state under state law.

The rule applies to NRC-licensed facilities that have "protected areas" or other areas that contain special nuclear material, byproduct material, or source material. Such facilities include nuclear power plants, high-level waste storage and disposal facilities, independent spent fuel storage installations, and uranium enrichment, uranium conversion and fuel fabrication facilities.

*The entire final rule can be found at <http://www.regulations.gov> by searching for documents filed under Docket ID [NRC-2008-0458].*

## Lease Signed for Third NRC Headquarters' Building

The General Services Administration, acting on behalf of the U.S. Nuclear Regulatory Commission, recently signed a lease with developer LCOR to build a 14-story office building adjacent to the NRC's two headquarters offices in Rockville, Maryland. This will permit the reconsolidation of staff displaced by agency growth.

“This is a tremendous accomplishment,” said NRC Chairman Gregory Jaczko. “A lot of people worked long and hard on this project, and it is great to see it come to fruition.”

The approximately 360,000 square feet of space—which the developer believes can be ready by July 2012—will house approximately 1,300 NRC personnel. Groundbreaking is expected to occur in the spring of 2010.

The building, designed by architect HOK, will meet Leadership in Energy and Environmental Design Silver certification standards set by the U.S. Green Building Council.

*A rendering of the new \$131 million building is available at <http://www.northbethesdacenter.com/office.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](http://www.nrc.gov)
- EPA Listserve Network • Contact Lockheed Martin EPA Technical Support at (800) 334-2405 or e-mail (leave subject blank and type help in body of message). ..... [listserv@unixmail.rtpnc.epa.gov](mailto:listserv@unixmail.rtpnc.epa.gov)
- EPA • (for program information, publications, laws and regulations) ..... [www.epa.gov](http://www.epa.gov)
- U.S. Government Printing Office (GPO) (for the Congressional Record, *Federal Register*, congressional bills and other documents, and access to more than 70 government databases). ..... [www.access.gpo.gov](http://www.access.gpo.gov)
- GAO homepage (access to reports and testimony) ..... [www.gao.gov](http://www.gao.gov)

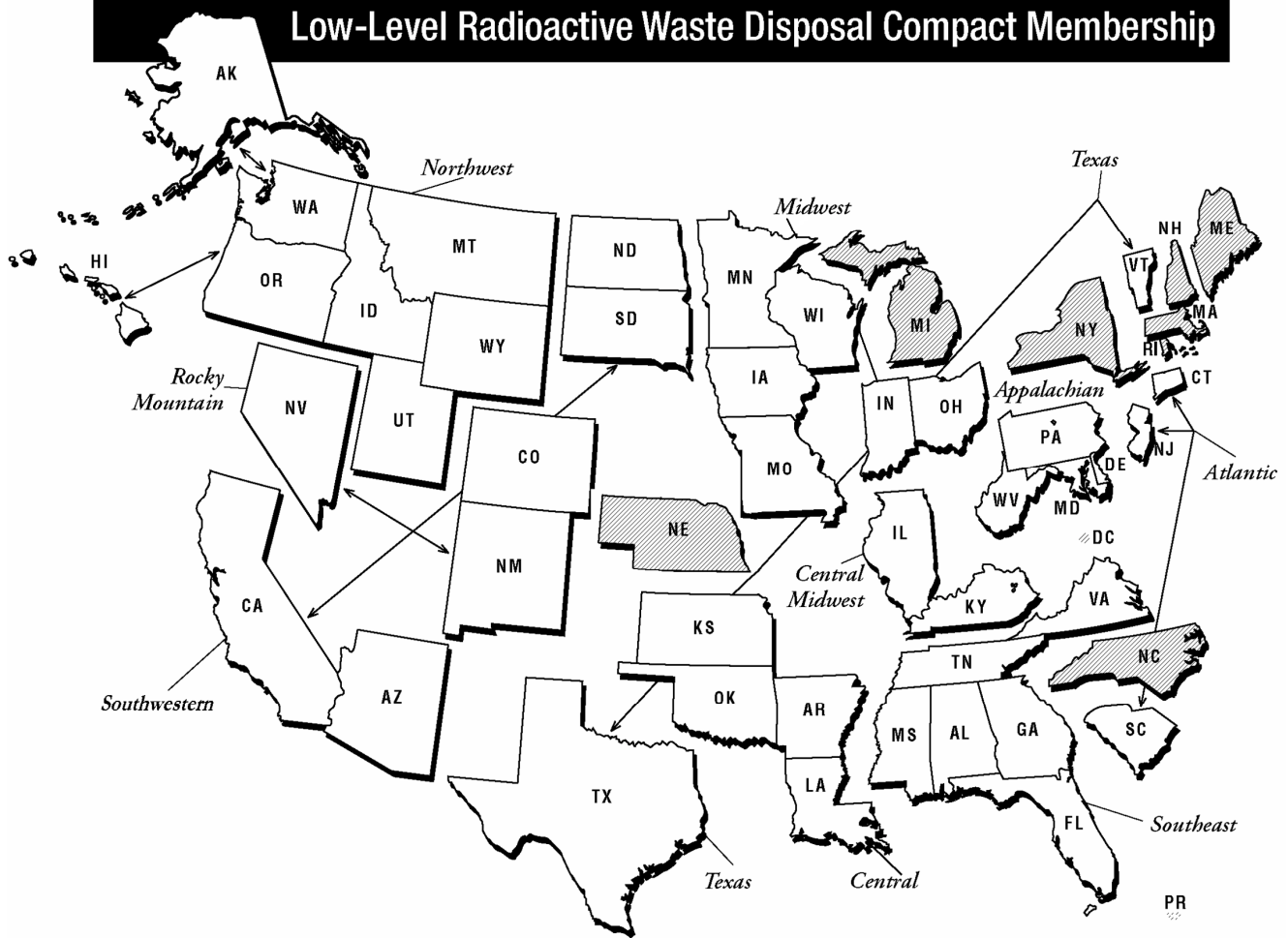
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*LLW Notes*, LLW Forum *Contact Information* and the *Summary Report: Low-Level Radioactive Waste Management Activities in the States and Compacts* are distributed to the Board of Directors of the LLW Forum, Inc. As of March 1998, *LLW Notes* and membership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

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

# Low-Level Radioactive Waste Disposal Compact Membership



## Appalachian Compact

Delaware  
Maryland  
Pennsylvania  
West Virginia

## Atlantic Compact

Connecticut  
New Jersey  
South Carolina

## Central Compact

Arkansas  
Kansas  
Louisiana  
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