

LLW *notes*

Volume 24, Number 5 September/October 2009

Texas Compact/State of Texas

TCEQ Signs Final LLRW License for WCS

On September 10, 2009, the Executive Director of the Texas Commission on Environmental Quality (TCEQ) signed the final Radioactive Material License No. R04100 for the disposal of Class A, B and C low-level radioactive waste at Waste Control Specialists' (WCS) facility in Andrews County.

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.

Next Steps

There is a pre-construction section of the license that must be completed and submitted to the TCEQ prior to commencement of major construction of the facilities. Additionally,

construction of the facilities may not commence until the pre-construction requirements have been fulfilled and the TCEQ Executive Director has granted written approval. Among several other requirements on waste acceptance, WCS must provide an acceptable agreement signed by the Secretary of the U.S. Department of Energy prior to accepting federal facility waste.

According to a press release issued by WCS, "construction of the new disposal facility will take about a year with disposal operations scheduled to begin in late 2010."

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

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

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Low-Level Radioactive Waste Forum, Inc.

LLW Notes

Volume 24, Number 5 September/October 2009

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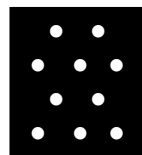
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Key to Abbreviations

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

Low-Level Radioactive Waste Forum, Inc.

LLW Forum Welcomes Texas Compact as New Member

The Low-Level Radioactive Waste Forum, Inc. (the “LLW Forum”) is pleased to announce that it has received and accepted a new member application from the Texas Low-Level Radioactive Waste Disposal Compact Commission (the “Commission”). In addition, Commission representatives attended and participated in the fall LLW Forum meeting in Park City, Utah.

With the addition of the Texas Compact Commission, the LLW Forum is now proud to count all ten operating compacts as members of the organization.

Texas Compact Commission

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

Michael Ford of Amarillo was named as Chairman and John White of Plano was named as Vice Chairman. Both terms are set to expire on November 25, 2014. In addition to Ford and White, Governor Perry appointed four other members to the Texas Commission including Richard Dolgener, Bob Gregory, Kenneth Peddicord, and Robert Wilson. The State of Vermont has named Uldis Vanags and Richard Smith as its two representatives to the Commission.

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

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

License Application Status

On September 10, 2009, TCEQ’s Executive Director signed the final Radioactive Material License application, No. R04100 for the disposal of Class A, B and C low-level waste at Waste Control Specialists’ facility in Andrews County. (See related story, this issue.) Pre-construction conditions must be met prior to the commencement of major construction of the facilities.

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

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

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

LLW Forum

The LLW Forum was originally established to facilitate state and compact implementation of the Low-Level Radioactive Waste Policy Act and its

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

The fall meeting of the LLW Forum—which was hosted by the State of Utah—was held at the Marriott Hotel in Park City, Utah on September 21-22, 2009. (The Executive Committee met on Monday morning.) There was also an optional site tour of the EnergySolutions' Clive facility on

Tuesday afternoon for interested parties. (See related story, this issue.) And, NRC hosted a two-day workshop on depleted uranium in Salt Lake City on the two days immediately following the LLW Forum meeting.

The next meeting of the LLW Forum will be held in Austin, Texas on March 22-23, 2010. The meeting is being co-sponsored by the State of Texas and Waste Control Specialists LLC. A meeting bulletin and registration form for the spring 2010 meeting can be found on the Home Page of the LLW Forum's web site at www.llwforum.org.

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

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

The Low-Level Radioactive Waste Forum is pleased to announce that registration for the spring 2010 meeting is now open. 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 site tours to individuals interested in continuing on to the WCS facility in Andrews County after the conclusion of the LLW Forum meeting. Persons interested in arranging such a site tour should contact Candance Greenwood of WCS at (575) 394-4300. If so 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

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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.

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 Putman Resort & Spa. (For additional information about the hotel, please go to http://www.historichotels.org/hotel/Gideon_Putnam_Resort_Spa.) The hotel is currently undergoing a major renovation to be completed in spring 2010. The Gideon Putnam is located in the center of Saratoga Spa State Park—about 1 mile outside downtown Saratoga Springs. Within walking distance on park grounds are two golf courses, the National Museum of Dance, the Saratoga Automobile Museum, the historic Roosevelt Mineral Baths and 10 natural mineral springs.

2011 Meetings

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 one of the LLW Forum meetings in 2012. The parties are currently investigating potential facilities in San Francisco, California.

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.

Atlantic Compact/State of New Jersey

New Jersey Becomes 37th Agreement State

On September 28, 2009, the U.S. Nuclear Regulatory Commission announced that the agency has completed an agreement with New Jersey, under which the state will assume NRC's regulatory authority over certain nuclear materials in the state. In so doing, New Jersey becomes the 37th state to sign such an agreement with the NRC, effective September 30.

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

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

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

By law, NRC will retain jurisdiction over commercial nuclear power plants and federal agencies using certain nuclear material in the

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

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

An announcement of the proposed agreement and the NRC staff's draft assessment of the New Jersey program were originally published in the *Federal Register* on May 27, 2009 ... as well as weekly thereafter for a total of four weeks. In addition, copies of the proposed agreement, the Governor's request, and supporting documents—as well as the draft assessment—were made available through NRC's Agency-wide Documents Access and Management System (ADAMS). NRC received six comment letters—two supporting the agreement, two opposed, one that supported the rationale of states assuming regulatory authority but not the fee differences that will occur, and one general comment that did not express support or opposition.

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

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

Central Midwest Compact/State of Kentucky

Improvements Required at Paducah Facility

As part of settlement agreements involving three unrelated issues, the U.S. Nuclear Regulatory Commission has issued Confirmatory Orders to the United States Enrichment Corporation's (USEC's) facility in Paducah, Kentucky. One issue involved operators concealing damaged equipment and falsifying records while moving a uranium hexafluoride cylinder. In the second issue, classified information was mishandled when a package was sent to an unapproved mailing address. The third issue stemmed from a U.S. Department of Labor decision that USEC retaliated against a former manager and an NRC concern for the potential influence this would have on the willingness of other employees to raise safety concerns.

USEC requested the alternative dispute resolution (ADR) process in each case, which can be implemented in place of traditional enforcement. This process includes the use of a mediator to resolve differences among the parties concerning the apparent violations and to discuss corrective actions. Often, the ADR process is more effective in developing effective long-term corrective actions than traditional enforcement. The confirmatory orders document USEC's commitments to the NRC reached as part of the agency's ADR process.

As part of the settlement agreements, USEC has agreed to a number of corrective actions and enhancements, including procedure revisions, improved oversight and an incorporation of lessons learned into training. USEC also agreed to a review of the events and a sharing of information with other company facilities. Some of the actions agreed to by USEC go beyond what

would have been required under the NRC's traditional enforcement process.

In consideration of these commitments made by USEC, NRC will not propose a civil penalty, issue a Notice of Violation or take other enforcement action on the three issues. The agency will, however, evaluate adherence to the commitments during future inspections.

Copies of the NRC letters detailing the agreements and required actions are publicly available online in the NRC's Agency-wide Document Access and Management System at www.nrc.gov/reading-rm/adams.html. The ML numbers are ML092220062 (discrimination), ML092300522 (classified information), and ML092300516 (damaged equipment).

Northwest Compact/State of Hawaii

Public Meetings Held re Army Depleted Uranium Munitions

The U.S. Nuclear Regulatory Commission has issued a notice of opportunity to request a hearing on a license application from the U.S. Army for possession of depleted uranium at two installations in Hawaii where depleted uranium remains from munitions training during the 1960s. The sites contain enough depleted uranium to require an NRC possession license and environmental monitoring and physical security programs to ensure protection of the public and the environment.

In late August 2009, NRC staff held public meetings in Oahu, Kona and Hilo to explain how the agency will review the Army's license application and, if the license is subsequently granted, monitor and enforce the license to ensure there is no danger to public health and safety or

the environment. The agency is also requesting public comment on the Army's plan. In addition, NRC conducted public meetings with Army officials in late August to discuss their monitoring plans for managing the depleted uranium.

In the 1960's, the Army used M101 spotting rounds made with depleted uranium in training soldiers with the Davy Crockett recoilless gun. The M101 rounds were used at proving grounds in Schofield Barracks on Oahu and the Pohakuloa Training Area on the Island of Hawaii until 1968. Fragments of expended rounds remain on the ground in impact areas of those training ranges.

To request an adjudicatory hearing on this application, potential parties must demonstrate standing by showing how the proposed license might affect them. They must also raise at least one admissible contention challenging the license application. Guidance on how to file a petition for a hearing is contained in a Notice of License Application and Opportunity for Hearing, published in the *Federal Register* on August 13 and available online at <http://edocket.access.gpo.gov/2009/pdf/E9-19449.pdf>.

The Army license application and associated documents, including the environmental monitoring and physical security plans and site characterization studies, are available through the NRC's ADAMS online documents database at <http://www.nrc.gov/reading-rm/adams/web-based.html> by entering these accession numbers: ML090070095, ML091950280, ML090900423 and ML091170322.

Northwest Compact/State of Idaho

American Ecology's CEO Succession Plan Announced

On September 17, 2009, American Ecology Corporation announced that its Board of Directors has adopted a CEO Transition Plan as part of its officer succession planning. Under the plan, effective January 1, 2010, President and Chief Operating Officer James Baumgardner will be appointed as Chief Executive Officer. Baumgardner will replace Stephen Romano, who will step down at the end of his current employment contract on December 31, 2009. Romano will continue to serve as Chairman of the company's Board of Directors.

"The Board has tremendous respect for the remarkable performance American Ecology has achieved over the past eight years under Steve Romano's direction and looks forward to his continued contributions as Chairman of our Board," commented Jeffrey Merrifield, lead independent director. "We are confident that Jim's excellent qualifications, experience and knowledge of American Ecology's operations position us well to build on these successes. We anticipate a seamless transition given his close working relationship with Steve, and his familiarity with our customers and regulators."

Baumgardner 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. Prior to rejoining the company, he served as Senior Vice President and Chief Financial Officer with SECOR International—a Redmond, Washington based environmental consulting firm—from 2006 to 2008. Before that, however, Baumgardner 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.

"Our Board of Directors has great confidence in Jim's ability to lead the Company in the next stage of growth," Romano stated. "Jim is an excellent leader with extensive business management experience, and detailed knowledge of our Company and our industry."

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.

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charge a higher rate. (The phone number for the Omni Austin Hotel is 512/476-3700. The web address is 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 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.

Southeast Compact

Larry Camper Receives 2010 Hodes Award

The Southeast Compact Commission for Low-Level Radioactive Waste Management has selected Larry Camper of the U.S. Nuclear Regulatory Commission (NRC) as its recipient for the 2010 Richard S. Hodes, M.D. Honor Lecture Award—a program that recognizes an individual, company, or organization that contributed in a significant way to improving the technology, policy, or practices of low-level radioactive waste management in the United States.

Camper is being recognized for his leadership and innovative efforts to implement substantial regulatory and management improvements in several key NRC regulatory programs. These improvements have enhanced public safety, as well as the efficiency and transparency of those programs.

Camper is the Director of NRC's Division of Waste Management and Environmental Protection. He has over 36 years of experience within the nuclear industry having served in a number of important management positions within both the private and public sectors. He currently serves as the U.S. Representative to the Waste Safety Standards Advisory Committee (WASSC) of the International Atomic Energy Agency (IAEA), as a member of the Board of Directors and the Program Advisory Committee for the Waste Management Symposia. He is a 2005 recipient of the Presidential Rank Award as a Meritorious Executive with the Senior Executive Service.

As the award recipient, Camper will present a lecture during the Waste Management '10 Symposium in Phoenix, Arizona. The symposium is sponsored by the University of Arizona and will be held from March 7-11, 2010.

States and Compacts *continued*

A special time is reserved during the Symposium for the lecture and the award presentation.

Award Background

Dr. Richard S. Hodes was a distinguished statesman and a lifetime scholar. He was one of the negotiators of the Southeast Compact law, in itself an innovative approach to public policy in waste management. He then served as the chair of the Southeast Compact Commission for Low-Level Radioactive Waste Management from its inception in 1983 until his death in 2002.

Throughout his career, Dr. Hodes developed and supported innovation in medicine, law, public policy, and technology.

The Richard S. Hodes, M.D. Honor Lecture Award was established in 2003 to honor the memory of Dr. Hodes and his achievements in the field of low-level radioactive waste management. It is awarded to an individual, company, or organization that contributed in a significant way to improving the technology, policy, or practices of low-level radioactive waste management in the United States.

Past Recipients

In 2004, the Southeast Compact Commission chose W.H. “Bud” Arrowsmith as the winner of the first Richard S. Hodes, M.D. Honor Lecture Award. The Texas A & M University Student Chapter of Advocates for Responsible Disposal in Texas (ARDT) was also chosen in 2004 for special recognition as an Honorable Mention for its innovation in educational activities related to low-level radioactive waste management. William Dornsife of Waste Control Specialists, LLC was chosen as the second Richard S. Hodes, M.D. Honor Lecture Award recipient in 2005 and the California Radioactive Materials Management Forum (CalRad Forum) received the award in 2006. In 2007, Perma-Fix Environmental Services Chief Operating Officer Larry McNamara was chosen to receive the award and Michael Ryan of the U.S. Nuclear Regulatory

Commission’s Advisory Committee on Nuclear Waste and Materials (ACNW&M) won the award in 2008. In 2009, the award was presented to Susan Jablonski—Director of the Texas Commission on Environmental Quality’s (TCEQ) Radioactive Materials Division.

For additional information, please contact Ted Buckner of the Southeast Compact Commission at (919) 821-0500 or tedb@secompact.org or visit the Southeast Compact Commission’s website at <http://www.secompact.org/>.

Southwestern Compact/State of California

Racho Seco Decommissioning Completed

Site Released for Unconditional Use

The U.S. Nuclear Regulatory Commission has approved a request from the Sacramento Municipal Utility District (SMUD) to release for unrestricted public use most of the Rancho Seco nuclear power plant site near Herald, California. The contamination level of the land, which is approximately 80 acres in size, falls below NRC regulatory requirements that allow a maximum radiation dose of 25 millirem per year from residual contamination. (The average person in the United States receives about 300 millirem per year from background, or natural, radiation.)

Approximately six acres of land remain under NRC licenses for a low-level radioactive waste storage building and a dry-cask storage facility for spent nuclear fuel at Rancho Seco. SMUD remains responsible for the security and protection of this land and the waste storage facilities. SMUD is required to maintain \$100 million in liability insurance coverage until all radioactive material has been removed from the site.

States and Compacts *continued*

NRC issued an operating license for Rancho Seco to SMUD in August 1974. The plant began commercial operations in April 1975 and was subsequently shut down in June 1989. SMUD submitted its license termination plan in 2006, and NRC approved the plan in 2007. Recent agency surveys verify that cleanup met the 25 millirem requirement.

NRC's Safety Evaluation Report of SMUD's request to release the site is available in the agency's ADAMS online document library at <http://www.nrc.gov/reading-rm/adams/web-based.html> by entering accession number ML092520046 in the search field.

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Background

WCS had originally submitted the 4,000-page license application (no. RW4100) on August 3, 2004, and had submitted subsequent revisions thereto. (See *LLW Notes*, July/August 2004, pp. 1, 8-10.) The application seeks authorization for the construction and operation of two separate facilities for the disposal of compact waste and federal waste.

On August 11, 2008, TCEQ filed with the Office of the Chief Clerk of the State of Texas a Notice of Draft License and Opportunity for Hearing, Draft License, Draft Licensing Order and Environmental Analysis related to WCS' license application. (See *LLW Notes*, July/August 2008, pp. 1, 10-11.) TCEQ held a public meeting on the matter in Andrews County on September 8, 2008.

On November 19, 2008, TCEQ formally asked the Texas Attorney General's office to begin mineral rights condemnation proceedings to ensure that the state requirement for acquisition of all mineral rights at the disposal site is met. (See *LLW Notes*, September/October 2008, pp. 10-11.)

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

On January 14, 2009, by a vote of 2 to 0, TCEQ Commissioners approved an order granting the application subject to the successful acquisition of the mineral rights on the underlying land at which the site will be located. (See *LLW Notes*, January/February 2009, pp. 1, 9-11.)

For additional background information or to access related documents, please go to http://www.tceq.state.tx.us/permitting/radmat/licensing/wcs_license_app.html.

Texas Compact Commission

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

Michael Ford of Amarillo was named as Chairman and John White of Plano was named as Vice Chairman. Both terms are set to expire on November 25, 2014. In addition to Ford and White, Governor Perry appointed four other members to the Texas Commission including Richard Dolgener, Bob Gregory, Kenneth Peddicord, and Robert Wilson. Vermont has also appointed Uldis Vanags and Richard Smith as its two members on the eight-member Commission.

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

States and Compacts *continued*

Recently, the Commission filed a "volume" rule with the Texas Secretary of State for final adoption. The rule, which will be published in the *Texas Register* on September 11 and become effective on September 20, states 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.

In addition, this past summer, the Commission held a stakeholder meeting to solicit input on import and export issues. The Commission plans to hold another meeting on these issues in the near future, although a date and location has not been selected as of yet.

WCS Statement

In a September 10 press release issued shortly after signing of the license, Rodney Baltzer, President of WCS, stated as follows:

The signing of this license is historic because it allows WCS to operate a commercial LLRW disposal facility, under the direction of TCEQ and the Texas Low-Level Radioactive Waste Disposal Compact Commission (the "Texas Compact Commission"), and a federal LLRW disposal facility. Our Andrews County facility is the first facility licensed for the disposal of this material since Congress adopted The Low-Level Radioactive Waste Policy Act in 1980 which authorized states to form Compacts for the safe, secure disposal of LLRW. Texas and Vermont comprise the Texas Compact (the "Compact").

WCS is proud to be part of a team that is providing a Texas solution for the disposal of waste generated by activities that are

essential to our society and improve our quality of life. These waste producers include power generators, hospitals, universities, research institutes, industrial plants, and the Department of Energy. WCS is partnered with our host communities in the Permian Basin, including Andrews and Eunice, New Mexico, and is looking forward to working with TCEQ and the Texas Compact Commission which will have substantial oversight of our disposal operations.

Texas Radiation Regulatory Conference Scheduled

The 2010 Texas Radiation Regulatory Conference will be held at the Doubletree Hotel in Austin, Texas on September 2-3, 2010. The Texas Department of State Health Services, the Texas Commission on Environmental Quality, the Texas Railroad Commission, and the South Texas Chapter of the Health Physics Society are hosting the conference jointly.

During the conference, information will be presented that is important to Radiation Safety Officers (RSOs), users of radiation, and other radiation staff. Special sessions are tentatively scheduled for Friday, September 3, for x-ray service providers and on Saturday, September 4, for mammography CEUs.

To assist in developing a program that meets everyone's needs, organizers are requesting that all interested parties go to the pre-conference survey website and answer the following questions:

1. Do you think you will attend the 2010 Texas Radiation Regulatory Conference?
2. (If no or undecided) What factors are

States and Compacts *continued*

- contributing to your decision?
3. What have you liked most about previous Radiation Regulatory Conferences?
 4. What have you liked least about previous Radiation Regulatory Conferences?
 5. What would you like added to Radiation Regulatory Conferences? (Please be specific.)
 6. What would you like to have removed from Radiation Regulatory Conferences?
 7. What specific topic(s) would you like addressed at the Radiation Regulatory Conference?
 8. Which Agency issues your license, permit or registration (e.g., DSHS, TCEQ or RRC)?
 9. What industry do you work in or represent?
 10. Other comments?

For additional information, please go to <http://www.tceq.state.tx.html>.

WCS Applauds Decision Upholding LLRW Disposal Bond

On October 6, 2009, a state district court judge issued a decision dismissing a lawsuit challenging the May 9 Andrews County bond election. (See *LLW Notes*, May/June 2009, pp. 17-18.)

Shortly thereafter, Waste Control Specialists LLC put out a press release applauding the decision.

WCS Statement

In response to dismissal of the lawsuit challenging the bond election, Tom Jones, WCS' Vice President of Community Relations, issued the following statement:

We applaud today's decision by Judge Gibson to uphold the May 9 bond election

and to dismiss the lawsuit that challenged the outcome.

Judge Gibson's ruling verifies the election was conducted properly by Andrews County officials and the votes were cast legally. The ruling also allows Andrews County and Waste Control Specialists to move forward with the issuance of the bonds, to begin construction of the low-level radioactive waste disposal facility and to begin putting people to work.

This is an important day for Andrews County and the Permian Basin because it is the culmination of an effort that began more than 20 years ago when James Roberts and other leaders clearly saw the need to diversify our economy. That vision has become a reality.

Bond Election

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

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

The Bond

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

States and Compacts *continued*

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

An opposition group called No Bonds for Billionaires opposes granting the bond for WCS' benefit. The informal group, which was started by sisters Melodye and Peggy Pryor, has been campaigning against passage of the bond.

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

License Application Status

On January 14, 2009, 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 related story, this issue.) 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 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.

WCS Names Executive Vice President of Operations

On October 5, 2009, Waste Control Specialists LLC announced the appointment of James Van Vliet as Executive Vice President of Operations. Van Vliet has worked as a federal regulator, state regulator, U.S. Department of Energy contractor/operator and a commercial licensee. He has 32 years of experience in all aspects of nuclear and radioactive waste disposal and management—including directing two of DOE's largest waste management operations and managing the largest commercial waste processing center in the nation.

"Jim's extensive qualifications and wide-ranging experience in the industry ensures our new low-level radioactive waste disposal operations will begin as soon as construction of the facility is complete," said WCS President Rodney Baltzer. "Working out of our corporate office in Dallas, Jim will develop the long-term plan of action needed to mark WCS as the national leader in the safe, permanent disposal of low-level radioactive waste. WCS Vice President and General Manager Linda Beach will continue to provide the solid, day-to-day, on-site management that is critical to the success of our Andrews facility. These two

experts will provide the direction and leadership necessary to keep WCS moving forward.”

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.

State of New York

Open House Held re West Valley Decommissioning Plan

On September 16, 2009, the U.S. Nuclear Regulatory Commission hosted an open house to update the public on the U.S. Department of Energy’s Phase I decommissioning plan for the West Valley Demonstration Project (WVDP). During the open house—which was held in West Valley, New York—NRC staff gave a brief overview of the agency’s review process and discussed various aspects of the review with members of the public. Stations were set up with posters and other materials addressing topics such as radiological dose assessment, hydraulic barrier evaluation, health physics and radiation surveys and sampling.

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

Congress gave NRC authority to review and consult with DOE informally on certain matters related to the project under the West Valley Demonstration Project Act of 1980. The two agencies subsequently executed a memorandum of understanding that provides that NRC would review and comment upon DOE’s decommissioning plan, and that DOE would review and consider NRC’s comments before initiating Phase I decommissioning activities.

DOE submitted Phase I of its decommissioning plan to NRC on December 3, 2008. The agency accepted it for a technical review in March. Phase I envisions remediation activities within the WVDP boundary, including removal of the Main Plant Process Building, the Vitrification Facility, source area of the North Plateau Groundwater Plume, wastewater treatment facility lagoons, and ancillary buildings, foundations, slabs and pads.

Phase 2 decommissioning of the remainder of the WVDP and center, or its long-term management, will be determined in the future and are not part of this decommissioning plan.

A copy of the DOE’s decommissioning plan and the NRC’s letter of acceptance to DOE are available in the NRC’s Agencywide Documents Access and Management Systems (ADAMS) under accession numbers ML083659423 and ML090780848 respectively. ADAMS is accessible via the agency’s web site at <http://www.nrc.gov/reading-rm/adams.html>. Help in using ADAMS is available by contacting the NRC’s Public Document Room at (800) 397-4209 or (301) 415-4737 or via e-mail at PDR.Resource@nrc.gov.

State of North Carolina

GE-Hitachi Uranium Enrichment Facility Application Accepted

In mid-August 2009, the U.S. Nuclear Regulatory Commission accepted for formal review an application by General Electric-Hitachi Global Laser Enrichment for a license to construct and operate a uranium enrichment plant using laser technology in Wilmington, North Carolina.

GE-Hitachi submitted the application in two stages:

- ♦ an environmental report submitted on January 30, 2009; and,
- ♦ a safety report, tendered on June 26, 2009.

NRC staff has completed an initial acceptance review and determined that the application is sufficiently complete for the agency to begin its formal licensing reviews. The agency has already requested additional information from the applicant, and additional requests are possible throughout the license review. Acceptance of the application for review does not indicate whether the Commission will issue a license.

NRC's licensing review will proceed on two tracks—an environmental impact statement (which will be published in draft for public comment) and the technical safety review. The agency anticipates these reviews and adjudicatory hearings will take approximately 30 months. Also, a notice of opportunity to request a hearing before the NRC's Atomic Safety and Licensing Board will be published in the *Federal Register*.

GE-Hitachi's application, minus certain classified and sensitive portions (i.e., proprietary information), is available on the NRC's web site at <http://www.nrc.gov/materials/fuel-cycle-fac/>

[laser.html](#). NRC's acceptance letter and request for additional information are available in the agency's ADAMS online documents database at <http://www.nrc.gov/reading-rm/adams/web-based.html> by searching for accession number ML091960561.

(Continued from page 26)

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.)

For additional information, please contact Michael Garner, Executive Director of the Northwest Compact, at (360) 407-7102; Bill Sinclair, Deputy Director of the Utah Department of Environmental Quality, at (801) 536-4405; Leonard Slosky, Executive Director of the Rocky Mountain Compact, at (303) 825-1912; or Dan Shrum, Senior Vice President of Regulatory Compliance at EnergySolutions, at (801) 649-2000.

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

Pleadings Filed in Suit re NW Compact Authority Over Clive Amicus Curiae and Briefs on Appeal Submitted to Court

On September 3, 2009, several compacts, an organization of state governments, and one individual state filed Amicus Curiae Briefs in a lawsuit challenging the Northwest Compact's authority to govern EnergySolution's low-level radioactive disposal site in Clive, Utah.

In addition, from August through September 2009, parties to the action submitted their briefs on appeal to the United States Court of Appeals for the Tenth Circuit. All parties have requested oral argument in the case, which is pending further action by the appellate court.

The Amicus Briefs

Joint Brief by Five Compacts and State Organization An Amicus Curiae Brief in support of all defendants-appellants and seeking reversal of the district court's decision was filed jointly by the following entities:

- ◆ 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,
- ◆ Council of State Governments.

The brief argues that (1) the history behind the passage of low-level radioactive waste legislation

supports the idea that Congress intended for the regional compacts to exercise broad authority over the management of waste within regional boundaries; (2) compact law as set forth in the 1985 Act is federal law establishing regional compact authority over low-level radioactive waste; and, (3) the district court's decision, if upheld, has broad implications for the compact system as a whole.

Briefs by Midwest Compact and State of New Mexico Two separate Amicus Curiae Briefs in support of the defendants were filed by the

- ◆ Midwest Interstate Low-Level Radioactive Waste Management Compact; and,
- ◆ State of New Mexico.

In its brief, the Midwest Compact asserts that (1) our world is full of low-level radioactive waste; (2) Congress has created a regional management system for low-level radioactive waste, specifically consented to the terms of the various regional interstate compacts, transformed those compacts into federal law and placed them beyond the reach of the Dormant Commerce Clause; and, (3) the district court's opinion threatens the low-level radioactive waste compact system.

The State of New Mexico contends in its brief that (1) as a member of the Rocky Mountain Compact, it has authority over the management and importation of low-level radioactive wastes within the state's boundaries; and, (2) the district court's decision, if allowed to stand, would interfere with the state's ability to regulate low-level radioactive waste.

Briefs on Appeal

On August 27, 2009, defendants/appellants the Northwest Compact, the State of Utah and the Rocky Mountain Board filed three separate briefs on appeal with the Tenth Circuit Court. EnergySolutions, the plaintiff/appellee, then filed its brief with the appellate court on September 10,

2009. On September 28, 2009, the defendants/appellants responded by filing three separate reply briefs with the court.

All parties are requesting oral argument in the case.

Defendants/Appellants Briefs on Appeal The following is an outline of the main arguments contained in the defendants/appellants briefs on appeal:

Northwest Compact: In its appellate brief, the Northwest Compact argues that (1) the compact's statute authorizes the Northwest Compact to prohibit the disposal of out-of-region low-level radioactive waste; and, (2) neither the 1985 Policy Act nor the repealed 1980 Policy Act limit authority granted in the compact statute to exclude out-of-region low-level radioactive waste from facilities within the compact region.

Rocky Mountain Compact: The Rocky Mountain Compact's appellate brief asserts that (1) inter-state compacts are multi-state instruments subject to federal rules of construction; (2) the plain terms of the Northwest Compact authorize its committee to restrict access to the Clive facility from out-of-region waste; (3) Congressional consent did not limit the Northwest Compact's authority to restrict access to the Clive facility or other facilities in the compact after 1992; and, (4) the district court's decision would negatively impact the entire radioactive waste compact system.

State of Utah: The State of Utah's appellate brief contends that (1) the Northwest Compact committee has explicit authority under the compact to control access for the disposal of out-of-region waste at any facility located in the compact region; and, (2) the compact committee's explicit access authority under the Congressionally approved compact is not constrained by the Dormant Commerce Clause, nor the 1980 and 1985 Policy Acts.

Plaintiff/Appellee Brief on Appeal

EnergySolutions first argues that the district court correctly concluded that the Northwest Compact's authority to exclude out-of-region waste only extends to the compact's own "regional disposal facility." In support of this contention, the company claims that (1) the compact may lawfully exclude out-of-region waste only to the extent authorized by Congress, and (2) the 1980 act contemplates exclusion of out-of-region waste only from regional disposal facilities.

Next, EnergySolutions asserts that the district court correctly concluded that the Clive facility is not a "regional disposal facility" under the 1980 act.

The company concludes its brief by contending that the district court properly observed that, because the Clive facility does not receive waste generated within the compact region, it would undermine the stated objectives of the 1980 act to allow the compact authority to restrict Clive's receipt of out-of-region waste. In support of its position, EnergySolutions states that (1) Congress, in enacting the 1980 act and creating the compact system, intended to encourage the development of new low-level radioactive waste disposal capacity, and (2) the district court's decision is limited and will not disrupt the operations of other compacts.

Defendants/Appellants Reply Briefs The following is an outline of the main arguments contained in the defendants/appellants reply briefs:

Northwest Compact: In its reply brief, the Northwest Compact argues that (1) the compact statute authorizes the Northwest Compact to control access to out-of-region low-level radioactive waste at the Clive facility, (2) the 1985 Policy Act does not define the scope of the Northwest Compact's authority over the Clive facility, and (3) EnergySolutions' argument that compacts have only authority expressly granted in the 1985 Policy Act would frustrate its purpose of

encouraging development of new low-level radioactive waste disposal facilities.

Rocky Mountain Compact: The Rocky Mountain Compact replies that (1) neither the 1980 Act nor the 1985 Policy Act negates the authority of the Northwest Compact over the Clive facility, (2) the Dormant Commerce Clause does not apply to federally-authorized exclusionary authority, and (3) the district court's ruling would seriously impede the interstate compact system.

State of Utah: The State of Utah agrees with the other defendants/appellants, first arguing that (1) federal authority does not negate the compact's exclusionary authority over the Clive facility, (2) the 1985 Policy Act and the Consent Act must be harmonized and no one statutory enactment takes precedence over the other, (3) the Northwest Compact's exclusionary authority comes from the Consent Act and not from the 1980 or 1985 Policy Acts, and (4) the transition compliance provision is not the source of the compact's exclusionary authority over the Clive facility. The state goes on to argue that the district court's ruling both destroys a significant component underlying Utah's willingness to license the Clive facility and will upset the balance struck between states and compacts in the 1985 Policy Act.

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.

For additional information, please contact Michael Garner, Executive Director of the Northwest Compact, at (360) 407-7102; Bill Sinclair, Deputy Director of the Utah Department of Environmental Quality, at (801) 536-4405; Leonard Slosky, Executive Director of the Rocky Mountain Compact, at (303) 825-1912; or Mark Walker of EnergySolutions, at (801) 231-9194.

Board of County Commissioners of the County of Adams v. Colorado Department of Public Health and Environment and Clean Harbors Deer Trail, LLC

Adams County Has Standing to Challenge Clean Harbors' License

On October 13, 2009, the Supreme Court of Colorado reversed the dismissal of two lawsuits brought by the Adams County Board of Commissioners (Adams County) against the Colorado Department of Public Health and Environment (CDPHE) and against intervenor Clean Harbors Deer Trail facility (CHDTF).

In so doing, the court held that Adams County has standing to challenge CDPHE's issuance of a radioactive materials license and hazardous waste

permit to CHDTF. The court remanded the cases for proceedings consistent with its opinion.

One justice issued a separate opinion, concurring in part and dissenting in part.

Background

CHDTF operates a hazardous waste disposal facility in Adams County, Colorado.

Under state statute, when an entity seeks to operate a hazardous waste disposal facility, it must first apply to the local board of county commissioners for a Certificate of Designation (CD). The county then forwards the application to the CDPHE, which is required to make various findings of fact on site approval, after which the county may hold public hearings before a decision is issued on the CD.

State law provides that CDPHE is the radiation control agency of the state and gives it authority to issue licenses pertaining to radioactive materials, including licenses for the disposal of low-level radioactive waste.

In 2005, in response to requests by CHDTF, the CDPHE renewed the facility's hazardous waste permit pursuant to the federal Resource Conservation and Recovery Act (RCRA) and issued to the facility a radioactive materials license allowing the acceptance and disposal of certain low-level radioactive materials.

Legal History

In February 2006, Adams County filed a complaint seeking judicial review of the permit on the grounds that it was issued without a valid CD and that it improperly resulted in a substantial change in the design and operation of the facility. In a separate action, Adams County also sought judicial review of the grant of the radioactive materials license. (See *LLW Notes*, January/February 2006, pp. 19-20, 29.)

In both cases, CDPHE responded with motions to dismiss, arguing that Adams County lacks judicial standing as a subordinate state agency. CHDTF then moved to intervene, joined the CDPHE's motion, and filed its own motions to dismiss.

The trial court granted the motions and dismissed the claims, concluding that Adams County lacked judicial standing to seek judicial review of the hazardous waste disposal permit and the radioactive materials license. Adams County then filed an appeal of the court's decisions.

On October 4, 2007, a three-judge panel of the Colorado Court of Appeals issued two orders affirming the lower court decisions in favor of the defendants. (See *LLW Notes*, November/December 2007, pp. 12-14.)

On March 17, 2008, the Supreme Court of Colorado granted Petitions for Certiorari brought by Adams County solely on the issue of the county's standing to challenge CDPHE's issuance of the license and permit without CHDTF first obtaining the proper CD's or otherwise obtaining the county's approval. (See *LLW Notes*, March/April 2008, pp. 18-19.)

Supreme Court's Ruling

The Supreme Court reversed the appellate court's rulings and held that Adams County has standing to challenge CDPHE's issuance of the license and permit. In so doing, the court stated that a party has standing if, taking the allegations of the complaint as true, it demonstrates that (1) it has suffered an injury in fact, and (2) the injury was to a "legally protected interest as contemplated by statutory or constitutional provisions." In the case at hand, the court determined that Adams County has satisfied both requirements.

Under the Low-Level Radioactive Waste Act and the Hazardous Waste Siting Act, the Department may not issue a license or permit to an applicant until the applicant has first applied for and received a ... [CD]

from the county in which the facility is to be located allowing for the disposal of the materials contemplated by the license or permit. In this case, the County has alleged that, notwithstanding the fact that Clean Harbors never applied for nor received such a CD, the Department issued a license and permit to Clean Harbors. The County has therefore alleged an injury in fact to its authority to issue (or to refuse to issue) a CD for the disposal of the materials in question prior to the Department's issuance of a license or permit. The County has satisfied the second step of the ... analysis as well because it has alleged an injury to an interest protected by the Low-Level Radioactive Waste Act and the Hazardous Waste Siting Act.

The court further ruled that Adams County has met specific prudential considerations that must be addressed due to a county's role vis-à-vis the state. Under such considerations, a subordinate state agency has no standing to sue the state unless expressly permitted to do so by statute.

In this case, we find that, under the Low-Level Radioactive Waste Act and the Hazardous Waste Siting Act, the County is not a subordinate state agency with regard to the issuance (or non-issuance) of a CD allowing for the disposal of materials contemplated by the license or permit. Instead, the authority to issue a CD is within the discretion of the county in which the disposal facility is to be located.

Based on the above, the Supreme Court of Colorado reversed the appellate court's rulings and remanded the cases for proceedings consistent with its opinion

Dissenting Justice's Opinion

Justice Hobbs wrote a separate opinion, concurring in part and dissenting in part from the majority's opinion. In particular, Justice Hobbs

disagreed with the majority's finding that county issuance of a CD is a prerequisite to the issuance of a permit or license by CDPHE "because such an interpretation contravenes Colorado's comprehensive statutory scheme for hazardous and low-level radioactive waste disposal and frustrates the Department's duty and authority to implement the Rocky Mountain Low-Level Radioactive Waste Compact." According to Justice Hobbs, "The Compact obligates party states to open and operate waste disposal facilities sufficient to manage the low-level radioactive waste generated within the region."

For information on the Deer Trail facility, please contact Phil Retallick of Clean Harbors at (803) 691-3427. For information on Colorado state regulations, please contact Gary Baughman of the Colorado Department of Public Health and Environment at (303) 692-3338. For information on Adams County's complaints, please contact Howard Kennison of Lindquist and Vennum at (303) 573-5900.

American Ecology Corporation v. Harold Skamser, Jr.

American Ecology Seeks Investigation of Idaho Lobbyist Claims Ties to Competitor

On August 20, 2009, American Ecology Corporation filed a complaint with the Idaho Secretary of State seeking investigation of a registered lobbyist whom they contend is unlawfully concealing his true employer.

Specifically, American Ecology claims that Harold Skamser filed a certified statement that identifies a fictitious lobbyist employer and conceals the identity of his true employer, whom American Ecology believes to be a front for competitor EnergySolutions.

Background

In May 2009, Westinghouse Electric filed an application with the U.S. Nuclear Regulatory Commission seeking a license exemption to allow the storage of approximately 50,000 tons of soil and debris containing low levels of enriched uranium American's Ecology's Grand View Idaho facility. Westinghouse contends that the material, which comes from a closed reactor fuel plant in Missouri, meets the site's limits and is similar to material already stored at the facility.

On July 28, 2009, NRC held a hearing on the exemption request in Grand View. Of approximately 15 persons testifying, the only individual to speak in opposition to the proposal was Steve Loosli—the founder of Citizens for a Clean Idaho. Loosli verbally identified himself as representing okosphere llc—a Pocatello, Idaho-based consulting company of which Loosli is the founder and vice-president responsible for business development. At the hearing, Loosli did not disclose the name of, nor did he indicate that he was representing, any client.

On August 14, 2009, Harold Skamser filed a certified statement with the Idaho Secretary of State identifying Citizens for a Clean Idaho as his lobbyist employer. The certified document states that Citizens for Clean Idaho is "a not for profit" and identified Loosli as his lobbyist employer's contact.

Issues

American Ecology alleges that Citizens for a Clean Idaho has not filed the necessary documents to become an Idaho non-profit corporation and is not a person or lobbyist employer as defined by law. In addition, American Ecology claims that the contact information listed for Loosli on Skamser's certified statement is not correct.

American Ecology's complaint further states as follows:

American Ecology has been advised that Skamser has over the course of the past week contacted the Office of the Governor, the Idaho Department of Environmental Quality and members of the Idaho Congressional Delegation lobbying against the proposed disposal at American Ecology's Grand View facility. These lobbying activities clearly suggest that Skamser's true lobbyist employer is okosphere llc or other entity acting on behalf of EnergySolutions.

In challenging such actions, American Ecology writes:

... [T]he stated purpose of Idaho's Election Campaign Contributions and Expenditures – Lobbyist Act is to "promote public confidence ... and ... openness in government." Regrettably, the above circumstances demonstrate that Skamser and his real lobbyist employer are violating both this purpose as well as the actual letter of the law. We request that you promptly investigate this matter, take the necessary action to stop it from continuing and impose appropriate penalties, and/or refer such violations to appropriate law enforcement officials.

Media Reports

Late this summer, the Idaho Statesman published an article claiming that it took less than a month for Loosli to create a web-site for Citizens for a Clean Idaho, organize a statewide phone campaign, hire lobbyist Harold Skamser, and engage formal federal nuclear waste negotiator for the U.S. Department of Energy David Leroy as the group's attorney.

The article acknowledges that Loosli denies that EnergySolutions or anyone else has hired him.

However, the article alleges that the day before the NRC hearing, Loosli posted a statement on Twitter that he had just gotten a "contract gig" that would take him to Western Idaho to attend a community meeting. Loosli claims that the statement was intended to "puff up" his business.

According to Loosli, Citizens for a Clean Idaho has raised about \$10,000 via a telephone solicitation campaign. The Idaho Statesman article alleges, however, that it contacted the dozen people listed on the organization's web site and only one indicated that she had ever spoken to the group. Others subsequently called to complain about being identified on the site without their authorization. Loosli attributed these errors to a telemarketing contractor and told the newspaper that he has apologized to those who have complained and has asked the contractor for an explanation.

For additional information, please contact Chad Hyslop, American Ecology's Director of Government and Public Affairs, at (208) 331-8400 or chyslop@americanecology.com.

U.S. House of Representatives

Mark-Up Held re Foreign Waste Bill

Hearing Held Earlier During Month

On October 30, 2009, the Subcommittee on Energy and the Environment of the House Energy and Commerce Committee conducted a mark-up of legislation introduced by Representative Bart Gordon (D-TN) that, among other things, proposes to strip the U.S. Nuclear Regulatory Commission of its jurisdiction to authorize the importation of low-level radioactive waste. During the mark-up, subcommittee members debated and recommended changes to the bill—H.R. 515, known as the “Radioactive Import Deterrence Act.”

On October 16, 2009, the subcommittee held a hearing on the bill, as well as a proposal by EnergySolutions regarding the importation of waste from Italy. Representatives from the U.S. Nuclear Regulatory Commission, EnergySolutions, and the Rocky Mountain Low-Level Radioactive Waste Board testified at the hearing.

After the hearing but prior to the mark-up, 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.

Subcommittee Hearing

The October 16 subcommittee 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;
- ♦ 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.

Interested persons may view an archived video Web Cast of the subcommittee's hearing 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 has been referred to both the Committee on Energy and Commerce and the Committee on Ways and Means. It currently has 79 co-sponsors, 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, has been referred to the Senate Committee on Environment and Public Works.

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

The complete text of the bills can be found at <http://thomas.loc.gov/cgi-bin/thomas> by looking up bill numbers 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

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Federal Agencies and Committees

Advisory Committee on Medical Uses of Isotopes (ACMUI)

ACMUI Holds October Meeting *Announces New Member*

On October 19-20, 2009, the U.S. Nuclear Regulatory Commission's Advisory Committee on Medical Uses of Isotopes (ACMUI) met at the agency's headquarters in Rockville, Maryland. The ACMUI advises the NRC on policy and technical issues related to the regulation of medical uses of certain radioactive materials. Portions of ACMUI meetings may be open to the public.

During the course of the meeting, ACMUI members discussed, among other items, an International Commission on Radiological Protection publication; the updates on permanent prostate brachytherapy medical events; and an update on results from the Society of Nuclear Medicine on the medical isotope shortage. Other agenda topics included: the medical uses of radium-223; information on the regulatory responsibilities of the U.S. Food and Drug Administration and a summary of the enforcement process and enforcement actions against medical licensees; review of the new security regulations in 10 CFR Part 37 and the potential changes to Part 35-medical use of byproduct material.

In August 2009, ACMUI announced the selection of Susan Langhorst, Ph.D., as the committee's radiation safety officer representative. Langhorst currently serves as the radiation safety officer for Washington University and Medical Center in St. Louis, Missouri. She has nearly 10 years of experience managing NRC licenses.

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

Advisory Committee on Reactor Safeguards (ACRS)

ACRS Holds September & October 2009 Meetings

The U.S. Nuclear Regulatory Commission's Advisory Committee on Reactor Safeguards (ACRS) met on September 10-12, and then again on October 8-10, 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 September meeting agenda included, among other things, final safety evaluation reports for the Indian Point, Three Mile Island, and Beaver Valley nuclear power plant license renewals; a draft regulatory guide for nuclear plant fire protection; and the draft Digital Instrumentation and Control (DI&C) Research Plan for fiscal years 2010-14.

The October meeting agenda included review and discussion of the combined license application for North Anna Power Station Unit 3 and the draft safety evaluation report with open items; the license renewal application and associated final safety evaluation report for the Susquehanna Steam Electric Station Unit 1 and 2; and risk assessment of consequential steam generator tube ruptures and other steam generator action plant items.

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.

Atomic Safety and Licensing Board (ASLB)

ASLB Holds Yucca Mountain Pre-Hearing Conference

On September 14-15, 2009, an Atomic Safety and Licensing Board (ASLB) held a pre-hearing conference in Las Vegas to discuss scheduling and other case management issues for the adjudicatory hearing on the U.S. Department of Energy's license application for the proposed Yucca Mountain high-level radioactive waste repository.

On August 25, the board issued an order establishing an agenda for the conference. Among the issues to be discussed were discovery and arguments on contentions in response to the NRC staff's decision to issue its Safety Evaluation Report on the license application serially, rather than all at once.

A video-cast of the conference may be seen at <http://www.visualwebcaster.com/event.asp?id=61553> and at <http://www.visualwebcaster.com/event.asp?id=61554>.

U.S. Nuclear Regulatory Commission

NRC Staff to Develop Vote Paper re LLW Blending

On October 8, 2009, the U.S. Nuclear Regulatory Commission 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."

According to the press release, 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.

Development of the Vote Paper

In a memo to NRC staff, Chairman Jaczko stated that, since the closure of the Barnwell facility to out-of-region waste in mid-2008, NRC has "received several inquiries from stakeholders asking us to clarify the agency's position on blending and what is acceptable under our regulations and guidance, especially with respect to blending that results in a change in classification of the waste under 10 CFR Part 61.55." After determining that "there are policy issues related to blending that will need to be considered by the Commission," Chairman Jaczko decided to direct the staff to prepare a vote paper on the topic within six months.

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's press release states that the current lack of disposal access for Class B and C waste for generators in 36 states and the resultant need for

these generators—primarily nuclear power plants, medical facilities and research institutions—to store waste on-site for an extended period of time has led to increased industry interest in blending.

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 related story, this issue.)

By letter dated August 27, 2009, NRC responded to comments on the issue of blending contained in *EnergySolutions*' correspondence. (See related story, this issue.)

NRC Clarifies Current Policy re Blending of LLW

By letter dated August 27, 2009, the U.S. Nuclear Regulatory Commission responded to comments contained in earlier correspondence from *EnergySolutions* on the issue of blending. *EnergySolutions*' letter—which was dated May 12, 2009—encourages NRC “to explicitly clarify that the blending of homogeneous media, e.g., resins

and filter media, is allowed under its regulations” and is consistent with the branch technical position (BTP) on concentration averaging and encapsulation. (See related story, this issue.)

In the August 27 letter, NRC states that blending is not prohibited nor is it explicitly addressed by NRC regulations, but acknowledges that agency staff has at times discouraged blending in guidance. “NRC guidance is generally consistent with the position of other regulatory organizations that blending and dilution are not prohibited,” states NRC's letter, “but are discouraged in certain circumstances and acknowledged as appropriate in others.”

NRC's Letter

Although *EnergySolutions*' May 12 letter asserts that NRC regulations allow waste generators to defer classifying waste until it is ready for disposal, NRC's August 27 response notes that generators often classify waste prior to shipment for disposal despite the regulatory requirements. “The 10 CFR 61.55 waste classification tables are predicated solely on protection of an inadvertent intruder into waste at a disposal facility at some future time after the disposal facility is closed,” writes NRC. “The classification of the waste in accordance with 10 CFR 61.55 is not directly related to the safety of the waste at intermediate points in its management.”

NRC guidance specifically acknowledges, “[B]lending of homogeneous wastes is appropriate under certain conditions.” However, the August 27 letter from NRC notes that agency staff has at times discouraged blending in its guidance. For instance, the appendix to NRC's 1995 BTP on concentration averaging and encapsulation states that waste should not be intentionally mixed solely to lower the waste classification. In a separate decommissioning guidance document, NRC states that mixing of soils to meet the waste acceptance criteria on an offsite disposal facility “should not result in lowering the classification of the waste ...”

NRC's letter states that blending does not increase waste volumes and involves materials that are disposed of, not released to the general public. Dilution, on the other hand, involves the mixing of clean and contaminated materials. Dilution increases waste volumes and may facilitate the release of small levels of contaminated materials to the general environment. NRC has also discouraged dilution. "The staff has not always clearly differentiated between dilution and blending in its guidance," writes NRC, "even though the impacts may be significantly different."

NRC's letter goes on to state that although blending and dilution are not prohibited, these practices "are discouraged in certain circumstances and acknowledged as appropriate in others." For instance, recommendations in the BTP that limit the amount of blending do not include the blending of homogeneous media that result in worker dose reductions or operational efficiencies. Likewise, blending to reduce the classification of waste from licensable material to exempt material is allowed under the decommissioning guidance. This same guidance recognizes that the mixing of clean and contaminated soils may be appropriate under certain very limited circumstances to meet the dose standard. "Agreement States are not required to use NRC guidance," states the letter, "but often adopt it for use in their regulatory programs."

In concluding the letter, NRC states that (1) the acceptability of any license amendment request that involves the blending of wastes would have to be determined by NRC or the appropriate Agreement State regulator and (2) NRC intends to revise the BTP. "While the positions described in this letter are applicable now, revisions could be forthcoming which would further elaborate on some of the issues discussed in this letter," writes NRC. "In fact, the staff believes that such clarification would be worthwhile and appropriate given the current waste management conditions."

Background

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

In the months following the briefing, several interested stakeholders—including EnergySolutions, Studsvik and Waste Control Specialists LLC—submitted comments to the Commission on various issues, including the blending of low-level radioactive waste. (See related story, this issue.) NRC staff plans to respond to the letters from Studsvik and WCS in early- to mid-November.

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 related story, this issue.)

Companies Weigh-In on Issue of Blending

In April 2009, the U.S. Nuclear Regulatory Commission hosted a briefing on low-level radioactive waste management and disposal at the agency's headquarters in Rockville, Maryland. (See *LLW Notes*, March/April 2009, pp. 1, 30-31.)

In the months following the briefing, several interested stakeholders—including EnergySolutions, Studsvik and Waste Control Specialists LLC—submitted comments to the Commission on various issues, including the blending of low-level radioactive waste. The correspondences provide very different perspectives and analyses of the associated issues and highlight the strong opinions generated by this topic.

Federal Agencies and Committees *continued*

To date, NRC has only responded to the letter from EnergySolutions. (See related story, this issue.) According to NRC staff, however, the agency plans to respond to the letters from Studsvik and WCS in early- to mid-November.

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 related story, this issue.)

Below please find a brief summary of the above-identified letters. Persons interested in more detailed information are directed to the correspondence themselves.

EnergySolutions’ Letter

By letter dated May 12, 2009, Thomas Magette, Senior Vice President of Nuclear Regulatory Strategy at EnergySolutions, encourages NRC “to explicitly clarify that the blending of homogeneous media, e.g., resins and filter media, is allowed under its regulations” and is consistent with the BTP on concentration averaging and encapsulation. In support of this position, Magette argues that licensees preparing waste for disposal routinely engage in blending to achieve ALARA performance objectives and enhance operational efficiency. Use of the practice at off-site locations would further these objectives and result in the generation of significantly less waste that requires storage, according to Magette.

In accordance with 10 CFR 20 Appendix G, waste classification and characterization is appropriately performed after waste has been appropriately processed and packaged for disposal, e.g. dewatering of resins. The concentration of radioisotopes within individual waste collection systems or interim containers prior to processing is irrelevant provided the final waste package following processing is prepared and evaluated following NRC guidance and

meets the classification requirements of the disposal site.

Much waste destined for storage could be shipped for processing prior to classification as authorized under 10 CFR 20 Appendix G, then processed, and finally classified as Class A for disposal. Under this approach there would be no intentional mixing of waste to change waste classification because the waste is yet to be classified. Furthermore, there would be no violation or circumvention of any NRC regulation or policy.

Magette goes on to assert that the concentration of waste prior to off-site waste processing has no negative environmental or health and safety consequence and will not adversely affect the disposal site’s ability to satisfy its performance objectives. Magette concludes his comments with a statement that “blending is not dilution,” because it does not use non-radiological material to artificially dilute waste. “Formal recognition of this distinction,” contends Magette, “would correct the misinformation that continues to be disseminated on this point.”

In addition to the issue of dilution, Magette’s letter provides comments on various other topics for the NRC to consider including risk informing Part 61, depleted uranium, the use of decommissioning trust funds, and the disposal of foreign-generated low-level radioactive waste.

For additional information, please contact Thomas Magette at (301) 957-3770 or at temagette@energysolutions.com.

Studsvik’s Letter

On August 7, 2009, Joseph DiCamillo, General Counsel for Studsvik, submitted formal comments to NRC on behalf of Studsvik on the issue of blending. DiCamillo asserts that “NRC regulations and the Branch Technical Position (BTP) clearly spell out the NRC’s existing policy

Federal Agencies and Committees *continued*

that waste streams may not be mixed solely to reduce the resulting waste classification (BTP and 10 CFR 61).” DiCamillo further states that Studsvik believes that restrictions on access to Barnwell do not justify a significant shift in the current NRC policy.

Contrary to other assertions, the practice of gathering LLW from various generators, shipping it to a third party as uncharacterized material (not waste) where it will be “blended” until the material can be classified as Class A LLW is not supported by current regulations and is far outside the scope of the BTP. The Commission has stated “extreme measures should not be taken when performing concentration averaging to determine waste classification. Extreme measures include: (1) Deliberate blending of lower concentration waste streams with high activity waste streams to achieve waste classification objectives” ...

Indeed, Studsvik believes the current proposals not only are inconsistent with current regulations and policy, but raise such significant technical, environmental, safety and policy issues that further study of all these issues are warranted and adoption of any changes should only be made through published rule making with appropriate opportunities for public comment.
(citations omitted)

DiCamillo contends that, prior to making any decisions, the Commission “must also 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.” In particular, he cites a Texas statute prohibiting dilution and a Utah statute prohibiting the acceptance or application for a license to accept Class B and C low-level radioactive waste.

Attached to DiCamillo’s letter is a detailed three-page analysis of arguments made in support of blending for consideration by the Commission.

For additional information, please contact Joseph DiCamillo at (312) 343-7808 or at joseph.dicamillo@studsvik.com.

Waste Control Specialists’ Letter

J. Scott Kirk, Director of Licensing and Corporate Compliance at Waste Control Specialists LLC, forwarded a letter to the NRC on September 22, 2009. The letter provides further comments from the company “in light of the substantial confusion that has arisen as a result of an [August 27] letter to [EnergySolutions] issued by ... NRC staff on the subject of the blending of LLW waste.” (See related story, this issue.)

In particular, Kirk writes that NRC’s letter “leaves the implication that the NRC now will accept the blending of Class B/C LLW for the purpose of allowing its disposal as Class A waste.” Despite what Kirk describes as “significant pressure” to modify existing policy due to restrictions on access to the Barnwell facility, WCS opposes “such a significant departure from established policy” and urges NRC “to clarify that blending for the purpose of allowing Class B/C waste to be disposed of as Class A waste is not allowed, at least until such time that the NRC has gone through a thorough and public review of the matter.”

Included with Kirk’s letter is a five-page memorandum addressing the blending of low-level radioactive waste for the purpose of changing waste classification. The memo addresses the following issues: WCS’ reliance on established NRC policy, NRC’s letter to EnergySolutions, cornerstones of waste management practices, and potential impacts to Agreement States.

Kirk’s memo concludes with the following statement:

Existing NRC policy, established in the BTP and reiterated and reinforced in numerous subsequent NRC pronouncements, prohibits

the blending/dilution of radioactive material for the purpose of changing its waste classification. The policy promotes fundamental waste management principles and, in effect, this often expressed, direct, and uniform interpretation has become administrative common law. The regulated community has relied on it—they have opened facilities and established businesses based on it.

The August 27, 2009, NRC letter casts doubt on NRC's continued commitment to its established policy. WCS therefore requests that NRC clarify that the BTP-established policy, which proscribes the blending or dilution of radioactive material for purposes of changing its waste classification (or its ultimate waste classification), is still applicable, and 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.

For additional information, please contact Scott Kirk at (972) 450-4233 or at skirk@valhi.net.

NRC Addresses Decommissioning Fund Assurance

On August 20, 2009, U.S. Nuclear Regulatory Commission staff met with industry and state officials, as well as members of the public, to discuss the agency's oversight of ensuring proper decommissioning funding for U.S. commercial nuclear reactors; the draft Regulatory Guide 1229 (DG-1229), "Assuring the Availability of Funds for Decommissioning Nuclear Reactors;" and, the reasoning behind the Guide's approach. The Guide is currently out for public comment.

During the meeting, NRC staff explained the Biennial Decommissioning Funding Report Analysis process and the draft DG-1229 including:

- ♦ how the NRC determines the minimum decommissioning formula;
- ♦ how the NRC determines if a nuclear power plant licensee demonstrates reasonable decommissioning funding assurance;
- ♦ the steps taken to address funding shortfalls;
- ♦ what the NRC expects from nuclear plant licensees;
- ♦ the history behind the NRC's decommissioning funding assurance regulations; and,
- ♦ the reasons for proposed changes in draft DG-1229.

The public was invited to attend the meeting and was given the opportunity during the session to ask questions and receive additional information from NRC staff.

For additional information, please go to <http://www.nrc.gov/public-involve/public-meetings/index.cfm>.

Meetings Held re Plant License Renewal Revisions

Throughout the year, the U.S. Nuclear Regulatory Commission has scheduled meetings around the country to hear comments on proposed changes to environmental regulations related to nuclear power plant license renewal. Each of the meetings include an open house, during which NRC staff are available to answer questions, as well as a formal meeting, during which members of the public are given an opportunity to comment on proposed changes. Meetings have been held in California, Georgia, Massachusetts, Illinois and Maryland.

The proposed changes are contained in the *Summary of Findings on National Environmental Policy Act (NEPA) Issues for License Renewal of Nuclear Power Plants*, and the draft revision of *Generic Environmental Impact Statement (GEIS) for License Renewal of Nuclear Plants*, NUREG-1437. The NRC is also publishing for comment a revised Regulatory Guide 4.2, Supplement 1, *Preparation of Environmental Reports for License Renewal Applications*, and NUREG-1555, Supplement 1, *Standard Review Plans for Environmental Reviews for Nuclear Power Plants*.

The proposed rule revisions redefine the number and scope of environmental impact issues that must be addressed in a nuclear power plant license renewal review. The Commission has stated that it intends to review the rule every 10 years and update it as necessary.

The GEIS assesses the overall scope and impact of environmental effects associated with license renewal at any nuclear power plant. Plant-specific supplements to the GEIS are prepared for each individual license renewal review.

Comments on the proposed rule, draft revised GEIS and associated documents were originally due by October 14. However, the agency has extended the deadline for submitting public comments until January 12, 2010.

The NRC's original notice on the proposed rule revisions can be obtained at <http://edocket.access.gpo.gov/2009/pdf/E9-24153.pdf> and the original press release at <http://www.nrc.gov/reading-rm/doc-collections/news/2009/09-130.html>. The associated documents can be found in ADAMS at adamswebsearch.nrc.gov/dologin.htm. The number for the draft revised GEIS is ML090220654; the draft Regulatory Guide 4.2 Supplement 1, Rev. 1, is ML091620409; and, the draft NUREG-1555, Supplement 1, Rev. 1 is ML090230497.

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

- ♦ held a public meeting to discuss the results of an inspection related to a request to extend the operating license for the Kewaunee nuclear power plant;
- ♦ announced the availability of an application for a 20-year renewal of the operating license for the Salem Nuclear Generating Station Units 1 and 2;
- ♦ announced the availability of an application for a 20-year renewal of the operating license for the Hope Creek Generating Station;
- ♦ issued its final safety evaluation report (SER) for the proposed renewal of the operating licenses for the Susquehanna Steam Electric Station, Units 1 and 2; and,
- ♦ issued its final SER for the proposed renewal of the operating licenses for the Indian Point Nuclear Generating Station Units 2 and 3.

Kewaunee Nuclear Plant

On September 30, 2009, NRC staff held a public meeting to discuss the results of an inspection related to a request to extend the operating license for the Kewaunee nuclear power plant. The NRC inspection is part of an ongoing review of the renewal application to ensure that a plant manages the effects of aging on key safety equipment through appropriate monitoring and maintenance programs. At the meeting, NRC staff presented the results of the inspection of the aging management programs proposed in the Kewaunee application.

Dominion Energy Kewaunee, which owns and operates the plant, has applied for a 20-year

Federal Agencies and Committees *continued*

license extension for the one-unit site. The plant is located in Kewaunee, Wisconsin—approximately 30 miles east of Green Bay. Dominion Energy Kewaunee applied for the renewal on August 14, 2008. If approved, the expiration date for the license would be extended to December 21, 2033.

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

Salem Nuclear Generating Station

On September 1, 2009, NRC announced the availability of an application for a 20-year renewal of the operating licenses for the Salem Nuclear Generating Station Units 1 and 2. The plant is located in Hancock Bridge, New Jersey. 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. NRC staff is currently conducting an initial review of the applications to determine if they contain sufficient information for the required formal review. If the applications have sufficient information, the NRC will formally “docket,” or file, them and will announce an opportunity to request a public hearing.

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 September 1, 2009, NRC announced the availability of an application for a 20-year renewal of the operating license for the Hope Creek Nuclear Generating Station. The plant is located in Hancock Bridge, New Jersey. The current operating license expires on April 11, 2026.

The licensee, PSEG Nuclear LLC, submitted the renewal application on August 18, 2009. NRC staff is currently conducting an initial review of the application to determine if it contains sufficient information for the required formal review. If the application has sufficient information, the NRC will formally “docket,” or file, it and will announce an opportunity to request a public hearing.

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>.

Susquehanna Nuclear Power Plant

On August 27, 2009, NRC issued its final SER for the proposed renewal of the operating licenses for the Susquehanna Steam Electric Station, Units 1 and 2. The agency concluded that there are no open items that would preclude license renewal for an additional 20 years of operation. The SER marks the completion of NRC staff’s safety review. The SER and the renewal application have been provided to the Advisory Committee on Reactor Safeguards for additional review and consideration.

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>.

Indian Point Nuclear Generating Station

On August 12, 2009, NRC issued its final SER for the proposed renewal of the operating licenses for the Indian Point Nuclear Generating Station Units 2 and 3. The agency concluded that there are no

open items that would preclude license renewal for an additional 20 years of operation. The SER marks the completion of NRC staff's safety review. The SER and the renewal application have been provided to the Advisory Committee on Reactor Safeguards for additional review and consideration.

Entergy Nuclear Operations Inc. submitted an application for extension of the licenses for each unit at the Indian Point plant in August 2007. The current operating licenses for the plant—which is located in Buchanan (Westchester County) in New York—are due to expire on September 28, 2013 and on December 12, 2015.

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

NRC Regulations/Status of Renewals

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

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

Renewal Application for NFS Facility Available

On October 9, 2009, NRC issued a notice of opportunity to request a hearing on the license renewal application for the uranium fuel fabrication facility operated by Nuclear Fuel Services Inc. (NFS) in Erwin, Tennessee.

NFS submitted its request to renew its license by letters dated June 30 and August 28, 2009. Approval of the request would allow NFS to continue producing nuclear reactor fuel using high-enriched and low-enriched uranium for an additional 40 years of operation. NFS' current license expired on July 31, 2009, but remains in effect under NRC regulations because NFS submitted its renewal application before the expiration date.

A notice of opportunity to request a hearing on the NFS application was published on October 6 in the *Federal Register* (74 FR 51323). The notice includes detailed instructions for requesting a hearing through the NRC's E-filing system. The deadline for requesting a hearing is December 7.

The NRC's technical review of the license renewal application will be documented in an SER and an Environmental Assessment.

The NFS letters and NRC's September 3 acceptance of the application for technical review are available in the NRC's online ADAMS document database at <http://www.nrc.gov/reading-rm/adams.html> by adding ML091900061, ML092450469, and ML091450265 in the search field.

NRC Hosts Reactor Licensing Workshop

In early October 2009, the U.S. Nuclear Regulatory Commission hosted a workshop at the agency's headquarters in Rockville, Maryland to discuss generic issues regarding potential applications for so-called "small and medium-sized" nuclear reactors. The public was invited to attend and to participate with NRC staff and industry representatives throughout the workshop.

"We're going to examine how these 'small' reactor vendors would need to address the NRC's requirements in areas including safety, security, decommissioning and emergency preparedness," said Michael Mayfield, Director of the Advanced Reactor Program in the NRC's Office of New Reactors. "This meeting will help us and our stakeholders determine what issues need more clarification and get everyone's expectations on the same page."

The NRC is currently focused on reviewing applications for a variety of light-water reactor designs similar in size to those used in current U.S. commercial nuclear power plants. Several reactor vendors, however, have indicated they intend to seek NRC certification for designs that are much smaller and in some cases could be used for applications other than producing electricity, such as providing heat for industrial purposes.

For additional information, please contact Brian Wagner at (301) 251-7595 or brian.wagner@nrc.gov or William Reckley at (301) 415-7490 or william.reckley@nrc.gov.

NRC Accepts Turkey Point COL Application

The U.S. Nuclear Regulatory Commission has accepted for review the Combined License (COL) application for two Advanced Passive 1000 (AP1000) reactors at the Turkey Point site near Homestead, Florida—about 25 miles south of Miami.

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

The prospective applicant, Florida Power & Light, submitted the application and associated materials on June 30, 2009. The AP1000 is a Westinghouse-designed pressurized water reactor, with a nominal output of approximately 1,100 megawatts of electricity. NRC certified the AP1000 design in January 2006, after which Westinghouse filed an application to amend the design in May 2007.

Docketing the Turkey Point application does not indicate whether the Commission will approve or reject the license request. NRC has established docket numbers 52-040 and 52-041 for this application. Petitions to intervene in a hearing on the application may be filed within 60 days of publication of such notice by the NRC by anyone whose interest may be affected by the proposed license and who wishes to participate as a party in the proceeding.

A copy of the application, minus proprietary and security-related details, can be found at <http://www.nrc.gov/reactors/new-reactors/colo/turkey-point.html>. Information about the AP1000 amendment application may be found at <http://www.nrc.gov/reactors/new-reactors/design-cert/amended-ap1000.html>. Information about the hearing process can be found at <http://www.nrc.gov/about-nrc/regulatory/adjudicatory/hearing.html>. And finally, information about the new reactor licensing process is available at <http://www.nrc.gov/reactors/new-reactors.html>.

NRC Issues ESP and LWA for Vogtle

The U.S. Nuclear Regulatory Commission's Office of New Reactors has issued an Early Site Permit (ESP) and Limited Work Authorization (LWA) to Southern Nuclear Operating Company for the Vogtle ESP site near Augusta, Georgia. The ESP, which is valid for up to 20 years, is the fourth such permit that has been approved by the NRC.

Successful completion of the ESP process resolves many site-related safety and environmental issues, and determines that the site is suitable for possible future construction and operation of a nuclear power plant. The LWA allows a narrow set of construction activities at the site.

Southern Nuclear filed its ESP application on August 15, 2006—with the LWA request being filed on August 16, 2007—seeking permission for construction activities limited to placement of engineered backfill, retaining walls, lean concrete, mudmats, and a waterproof membrane.

Technical review of the applications by NRC covered issues such as how the site's characteristics could affect plant safety, environmental protection, and plans for coping with emergencies. NRC staff published a final environmental impact statement for the permits in August of 2008 and a final safety evaluation in February of 2009. The Atomic Safety and Licensing Board conducted a hearing on the matter and ruled in August of 2009 that the permit could be issued.

NRC staff is currently reviewing Southern Nuclear's application for a Combined License (COL) to build and operate two AP1000 reactors at the Vogtle site. The Vogtle ESP resolves some of the environmental issues involved in that review. The NRC would have to issue a COL before full construction could begin.

Copies of the Vogtle ESP and related documents can be found at <http://www.nrc.gov/reactors/new-reactors/esp/vogtle.html>.

Transfer Approved re Nuclear Joint Venture

In October 2009, the U.S. Nuclear Regulatory Commission announced approval of the transfer of the operating licenses for the Calvert Cliffs Units 1 and 2, Nine Mile Point Units 1 and 2, and Ginna nuclear reactors, as well as the license for the Calvert Cliffs Independent Spent Fuel Storage Installation (ISFSI). The licenses were transferred, effective October 9, to a new ownership structure created by the joint venture of Constellation Energy Nuclear Group (CENG) and EDF Development, a U.S. subsidiary of Electricite de France S.A.—a French limited company.

In January 2009, CENG and EDF Development submitted an application requesting approval of the license transfer. The companies provided supplemental information from February through July of this year. Following EDF Development's proposed purchase of 49.99 percent of CENG, Constellation Energy Group (CEG) would hold the remaining 50.01 percent through two intermediate companies—Constellation Nuclear and CE Nuclear. The current Constellation Nuclear Power Plants corporation would become an LLC and exist between CENG and the individual power plants.

NRC regulations prohibit a license transfer recipient from being owned, controlled, or dominated by a foreign individual or entity. Accordingly, the agency's approval of this transfer contains several conditions to prevent foreign control of the nuclear power plants, including:

- ♦ the proposed transfer's operating agreement may not be modified concerning decision-making authority over safety issues without the prior written consent of the Director of NRC's Office of Nuclear Regulatory Regulation;

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- ♦ at least half of the members of CENG's Board of Directors must be U.S. citizens;
- ♦ CENG's Chief Executive Officer, Chief Nuclear Officer and Chairman of the Board of Directors must be U.S. citizens and shall have exclusive authority to ensure the company's business and activities with respect to the affected reactors and the Calvert Cliffs ISFSI are at all times conducted in a manner consistent with the public health and safety and common defense and security of the United States; and,
- ♦ CENG will establish a Nuclear Advisory Committee, composed of U.S. citizens who are not officers, directors, or employees of CENG, CEG or EDF Development, to report to the NRC and other U.S. agencies regarding foreign ownership and control of nuclear operations.

The NRC also considered various other major issues including financial and technical qualifications, as well as the transfer and maintenance of accumulated decommissioning funds.

Copies of NRC's approval order and accompanying non-proprietary safety evaluation reports will be placed in the agency's Public Document Room and will be available on the NRC's Agency-wide Documents Access and Management System (ADAMS) by entering accession number ML092570583 (Calvert Cliffs and ISFSI), ML092570623 (Nine Mile Point), and ML092570554 (Gina) at <http://adamswebsearch.nrc.gov/dologin.htm>.

NRC Seeks Comment re Reactor Oversight Process

The U.S. Nuclear Regulatory Commission is seeking comments from members of the public, licensees and interested groups on implementation of the Reactor Oversight Process (ROP). NRC's ROP is the agency's program to inspect, measure and assess the safety performance of commercial nuclear power plants and to respond to any decline in performance.

In particular, NRC is seeking the public's answers to a list of 20 questions relating to the ROP, including:

- ♦ Does the Inspection Program adequately cover areas important to safety and/or security?
- ♦ Does the Performance Indicator Program provide useful insights, particularly when combined with the Inspection Program, to help ensure plant safety and/or security?
- ♦ Is the ROP understandable, and are the processes, procedures and products clear and written in plain English?
- ♦ Has the public had sufficient opportunity to participate in the ROP and provide input and comments?

The comment period runs until November 6.

An electronic version of the survey questions and additional information about the ROP are available at <http://www.nrc.gov/NRR/OVERSIGHT/ASSESS/index.html>.

NRC Seeks Comment re Nuclear Fuel Cycle Oversight

The U.S. Nuclear Regulatory Commission is seeking public comment on proposed revisions to its oversight process for nuclear fuel cycle facilities. The agency is considering significant changes to processes for overseeing the safety and security of uranium conversion, enrichment and nuclear fuel fabrication facilities. Current oversight consists mainly of inspections, enforcement and periodic assessments based on inspection findings. The revised oversight process would improve inspection and assessment so that NRC conclusions would be more closely based on risk and more understandable to members of the public.

On September 3, 2009, NRC published a *Federal Register* notice describing the proposed revisions and requesting public comment on a number of specific questions regarding the oversight framework (such as performance indicators and significance determination), baseline inspections, the assessment process, and implementation. These are similar to the components of the agency's reactor oversight process for nuclear power plants.

In addition, NRC staff recently made several documents relating to the revised fuel cycle oversight process available to industry stakeholders for their comment. These documents are available in the NRC's online ADAMS document system at <http://www.nrc.gov/reading-rm/adams/web-based.html> by entering accession number ML092380069 in the search window.

Comments were accepted through November 2.

NRC Increases Openness and Transparency

On September 28, U.S. Nuclear Regulatory Commission Chairman Gregory Jaczko announced plans to begin immediately releasing his votes to the public, moving away from the Commission's long-standing tradition of withholding that information until action on issues is completed. To begin this new initiative, Jaczko released his views on several items before the Commission—including a draft final rule on decommissioning planning and a draft policy statement on safety culture.

"I believe this will give the public a better understanding of how the Commission makes decisions," said Jaczko. "Public discussions of our deliberations are appropriate and beneficial. I look forward to broadening this effort and taking the next logical step of convening public decision-making meetings of the Commission."

Jaczko also released his September 17 vote on the update to the Waste Confidence rulemaking, which has been before the Commission since June. He indicated his agreement with the proposed final rule language offered by the staff after an extended public comment period and also proposed a compromise position.

Recently released votes for all of the Commissioners can be found at <http://www.nrc.gov/reading-rm/doc-collections/commission/recent/2009/> and <http://www.nrc.gov/reading-rm/doc-collections/commission/cvr/2009/>.

Meeting re Proposed Changes to Emergency Preparedness

On September 17, 2009, the U.S. Nuclear Regulatory Commission held an additional public meeting to discuss proposed enhancements to emergency preparedness regulations and proposed changes to related guidance documents. Eleven previous public meetings have been held on the subject in conjunction with the Federal Emergency Management Agency. However, this final meeting—which was requested by stakeholders—focused only on the proposed NRC documents.

At the meeting, NRC representatives summarized the changes proposed in the rule and supporting guidance. Attendees were then invited to ask questions.

More information about the meeting may be obtained at www.nrc.gov/public-involve/public-meetings/index.cfm. The associated documents may be obtained at www.regulations.gov (Docket ID NRC-2008-0122).

NRC Commission Schedule for 2009

The following is a list of U.S. Nuclear Regulatory Commission meetings through the calendar year that the Commission has agreed to hold:

- ♦ October 13 session on cyber-security, some of which may be closed to the public;
- ♦ November 3 session providing a status report on the licensee efforts to transition to a new performance-based method of protecting against the risk of fires at nuclear power plants;
- ♦ November 10 briefing on the NRC's international activities;
- ♦ November 17 briefing on the agency's Equal Employment Opportunity Small Business programs; and,
- ♦ December 8 briefing on a proposed rule to enhance emergency preparedness regulations for nuclear facilities.

More details on these meetings are available on NRC's web site at <http://www.nrc.gov/about-nrc/policy-making/schedule.html>.

NRC Issues Mid-Cycle Assessment Letters

The U.S. Nuclear Regulatory Commission has issued mid-cycle assessment letters to the nation's 104 operating nuclear power plants. These recent assessments show that all plants continue to operate safely, with all 104 plants being placed in the two highest categories.

There are five levels of plant performance based on a detailed assessment of performance indicators (i.e., safety system availability and reliability, control of radiation exposure and unplanned shutdowns) and inspection findings. Levels range from "meeting all safety and cornerstone objectives" (highest level) to "unacceptable performance" (lowest level).

According to the latest round of assessments, 84 of the plants are performing at the highest level. If a nuclear plant's performance declines, the NRC increases the level of inspection to ensure that the plant operator is taking the steps necessary to correct the situation. The additional amount of inspection is commensurate with the level of plant performance.

Currently, 20 plants are receiving additional inspection and attention, including Unit 1 at Arkansas Nuclear One (Ark.), Units 1 and 2 at Calvert Cliffs (Md.), Columbia Generating

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Station (Wash.), Cooper (Neb.), Duane Arnold (Iowa), Units 1 and 2 at Farley (Ala.), Ginna (N.Y.), Units 1 and 2 at Hatch (Ga.), Kewaunee (Wis.), Units 1 and 2 at McGuire (N.C.), Unit 2 at Nine Mile Point (N.Y.), Unit 1 at Oconee (S.C.), Palisades (Mich.), Units 1 and 2 at Prairie Island (Minn.) and Unit 2 at San Onofre (Calif.).

Every six months, each plant receives either a mid-cycle review letter or an annual assessment letter, along with an NRC inspection plan. The next annual assessment letters will be issued in March 2010.

A list of each plant's current performance rating is available on the NRC web site at http://www.nrc.gov/NRR/OVERSIGHT/ASSESS/actionmatrix_summary.html. The mid-cycle assessment letters sent to each licensee are available on the NRC web site at <http://www.nrc.gov/NRR/OVERSIGHT/ASSESS/index.html>.

Proposed Licensing Changes re Spent Fuel Storage

On September 15, 2009, the U.S. Nuclear Regulatory Commission announced that it is seeking public comment on proposed changes to the agency's licensing requirements for the storage of spent nuclear fuel. The agency published a proposed rule in the *Federal Register* on the same day.

Among other things, the proposed changes would clarify the term limits for specific licenses for independent spent fuel storage installations (ISFSI's) and for certificates of compliance (CoC's) for spent fuel storage casks. In addition, the agency is proposing to formalize the initial and renewal terms of a specific ISFSI license at a period of up to 40 years, instead of the current duration of up to 20 years. This change would codify a technical approach begun in 2004 with

the renewal of the licenses for storage installations at the Surry and H.B. Robinson nuclear power plants. Currently, licensees must request an exemption if they desire a term of more than 20 years.

The proposed rule would also allow CoC applicants to request initial and renewal terms of up to 40 years, provided that they can demonstrate that all design requirements are satisfied for the requested term. For both site-specific licenses and CoC's, the proposed rule would require renewal applicants to provide time-limited aging analyses and a description of an aging management program to ensure that storage casks will perform as designed under the extended renewal terms.

The proposed rule would also allow general licensees to implement changes authorized by an amended certificate of compliance to a cask previously loaded under the initial certificate or an earlier amended certificate. Currently, licensees must request exemptions to modify such "previously loaded casks." These changes will save licensee and NRC resources without an adverse effect on public health and safety or the environment.

Comments will be accepted for 75 days following publication in the Federal Register.

Obtaining Publications

To Obtain Federal Government Information

by telephone

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

by internet

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

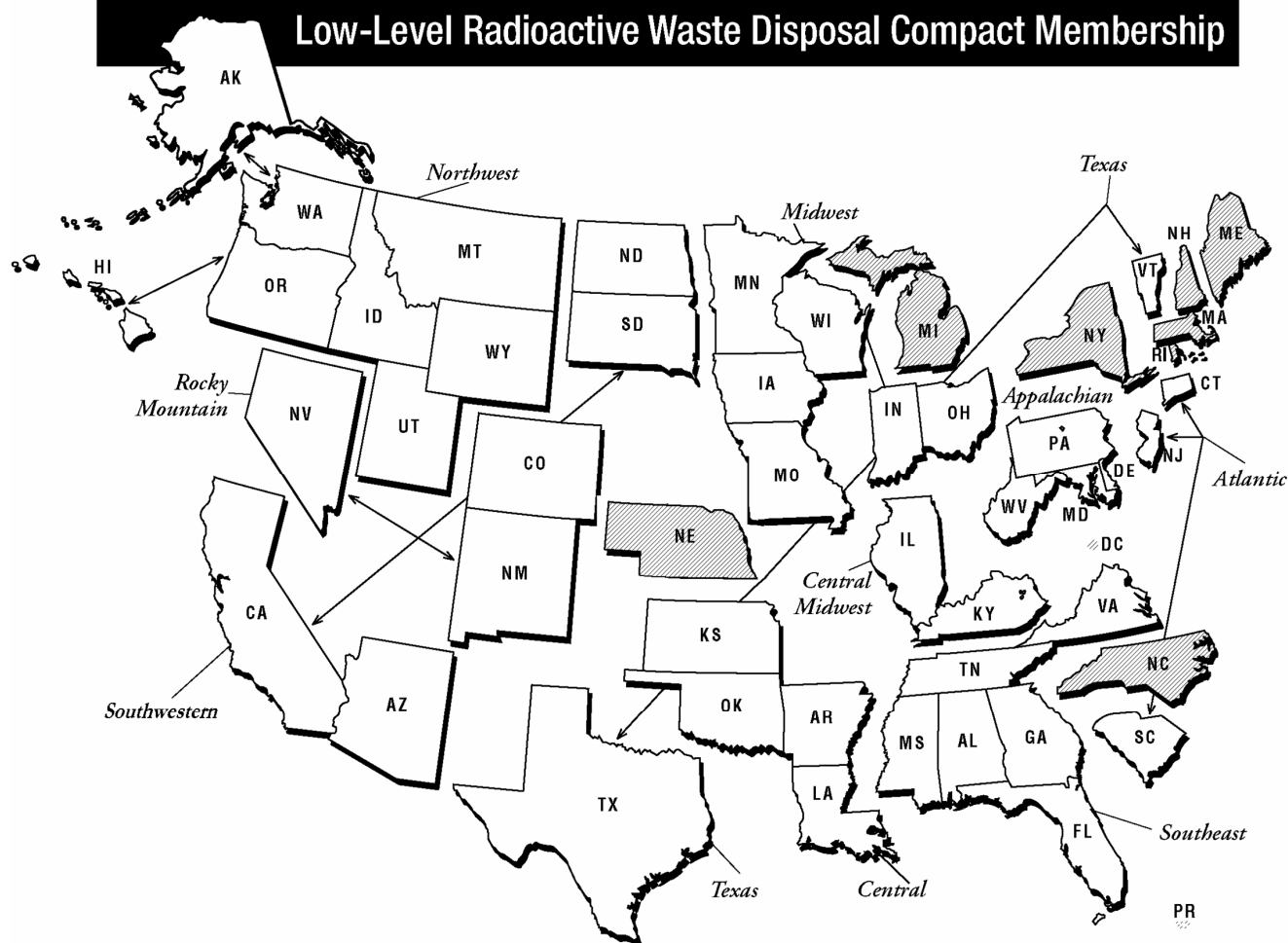
To access a variety of documents through numerous links, visit the web site for the LLW Forum, Inc. at www.llwforum.org

Accessing LLW Forum, Inc. Documents on the Web

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

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

Low-Level Radioactive Waste Disposal Compact Membership



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Rocky Mountain Compact

Colorado
Nevada
New Mexico

Northwest accepts Rocky Mountain waste as agreed between compacts

Southeast Compact

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Florida
Georgia
Mississippi
Tennessee
Virginia

Southwestern Compact

Arizona
California
North Dakota
South Dakota

Texas Compact

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