LLW notes

Volume 25, Number 3 May/June 2010

Alabama, et. al. v. North Carolina

Analysis re U.S. Supreme Court Opinion in Southeast Compact Suit

Court Rules North Carolina Did Not Violate Agreement

On June 1, 2010, the U.S. Supreme Court issued its opinion in a lawsuit initiated by the Southeast Interstate Low-Level Radioactive Waste Management Commission ("Commission") and several of its member states against the State of North Carolina ("State"). The action sought the enforcement of sanctions against the State for its alleged failure to develop a regional low-level radioactive waste disposal facility. The Court found in favor of the defendant, however, holding that North Carolina did not breach its duties under the Southeast Compact.

Below please find a detailed analysis of the Court's decision, which includes significant interpretation of compact language, as well as actions by the individual parties, that could have bearing on other low-level radioactive waste compacts. Therefore, interested members of the LLW Forum—and compact members in particular—are encouraged to review the decision themselves and/or refer it to legal counsel for analysis of its potential impacts on your own individual compact. For instance, some compacts may want to adjust their bylaws and/or rules upon reading the Court's analysis, as well as use it as a guide in determining future courses of action.

Court's Majority Opinion

The Court assigned the case to a Special Master, who conducted proceedings and filed two reports. (See "Background" section below.) The Plaintiffs filed seven exceptions to the Special Master's reports, and the Defendant filed two exceptions. The Court's opinion addressed each exception individually.

Below is a brief summary overview of the Court's analysis for each individual exception. Persons

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In This Issue

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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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Directors that serve on the Board of the Low-Level Radioactive Waste Forum, Inc. are appointed by governors and compact commissions. The LLW Forum, Inc. was established to facilitate state and compact implementation of the Low-Level Radioactive Waste Policy Amendments Act of 1985 and to promote the objectives of low-level radioactive waste regional compacts. The LLW Forum, Inc. provides an opportunity for state and compact officials to share information with one another and to exchange views with officials of federal agencies and other interested parties.

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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.

Registration Open for Fall 2010 LLW Forum Meeting

Saratoga Springs, New York on September 27-28, 2010

The Low-Level Radioactive Waste Forum is pleased to announce that registration is now open for the fall 2010 meeting. A meeting bulletin and registration form can be found on the LLW Forum's web site at www.llwforum.org.

The meeting will be held at the Gideon Putnam Resort in Saratoga Springs, New York. The New York State Energy Research & Development Authority (NYSERDA) is sponsoring the meeting—which will be held on Monday, September 27, and Tuesday, September 28. The Executive Committee will meet on Monday morning.

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

Persons who plan to attend the meeting are encouraged to make their hotel reservations and send in their registration forms as soon as possible as we have exceeded our block for the last few meetings. Once the block is full, the hotel may charge a higher rate. The phone number for the Gideon Putnam Resort is (866) 890-1171. The web address is www.gideonputnam.com. Please ask for a room in the LLW Forum Meeting 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 Lovinger, the LLW Forum's Executive Director, at (202) 265-7990 or at LLWForumInc@aol.com.

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 Fall Meeting

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

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Appalachian Compact/State of Pennsylvania

Pennsylvania Submits Comments re Blending of LLW

The following is a reprint of comments on the blending of low-level radioactive waste that were recently submitted by the Commonwealth of Pennsylvania's Department of Environmental Protection (DEP) to the U.S. Nuclear Regulatory Commission (NRC) in response to the agency's request found at 74 *Federal Register* 228 (Docket ID NRC 2009-0520).

As of July1, 2008, the Barnwell disposal facility in South Carolina no longer accepts low-level radioactive waste (LLRW) from outside the Atlantic Compact (Connecticut, New Jersey and South Carolina). As a result, the generators in 36 states do not have access to disposal for class B and C and certain class A LLRW.

The department believes that in the long-term, the lack of disposal options for these types of wastes could have an adverse impact on the generators as well as the states, if some of these materials (i.e., disused sealed sources) are abandoned due to lack of disposal. The use of radioactive materials, which generally result in generation of LLRW, plays an important role in biomedical research and medical treatment. Unfortunately, the lack of disposal options and/or high cost of disposal have already impacted the production of certain radioactive isotopes that are essential for medial research and treatment such as technetium (Tc-99) and molybdenum (Mo-99).

It is imperative that the regulators (NRC and Agreement States), the LLRW generators and the disposal facility operators cooperate to identify options and solutions for disposal of Class B and C wastes and Class A sealed sources. In the short-term, this can be accomplished by reviewing the existing requirements and guidelines to provide additional flexibility for disposal of wastes that are in storage due to lack of access to a disposal facility. A potentially viable option to consider is intentional blending or mixing of LLRW of different concentrations into a homogeneous mixture, as proposed by the NRC. The department would not oppose intentional blending of LLRW if it results in a change of classification of waste to a lower classification and only for access to a LLRW disposal facility and not for release to the environment. However, it is recommended that the NRC consider the following technical and policy issues as it relates to intentional blending of LLRW.

1. The NRC should provide a clear definition of blending. This definition should prohibit the mixing of clean with contaminated materials for the purpose of changing waste classification or dilution of waste. Additionally, blending which would result in a higher classification of waste (i.e., from Class B and C to Greater Than Class C) should not be allowed or at a minimum, it should be discouraged. The Pennsylvania LLRW regulations (25 Pa Code, Section 236.01) prohibit intentional dilution of waste by the disposal facility operator to alter its classification. The PA regulations do not specifically define dilution and as such, the department will not allow blending of LLRW by the regional disposal facility site operator.

2. There will continue to be a need for good record keeping and proper waste attribution should blending be allowed as a routine practice by waste processing facilities. If constituents of the blended waste could not be attributed to the original generator(s), it would have to be reported as waste generated by the processing facility and this

is not acceptable. It is expected that the processor will maintain and report to the disposal facility the original waste generator, the original class of waste prior to blending, original waste streams prior to blending, the original isotopic contents prior to blending, and the original volume and radioactivity of the waste prior to blending. Otherwise, this situation could create some policy, technical and legal issues for states and compacts that the waste processor is located in. For example, the Appalachian States LLRW Compact Act (Act 1985-120) contains a provision that would require the compact commission to designate, as a host state, a party state that generates 25 percent or more of Pennsylvania's (host state) waste based on comparison of averages over three successive year. Absent an accurate record keeping and waste attribution by processors, the compact commission would not be able to adequately implement this provision of the compact act.

3. Prior to making a decision on blending, NRC should consider the potential impact of any decisions on the Agreement States, particularly as it relates to state specific statutes and regulations for management and disposal of LLRW. If NRC implements a position on blending by guidance, Agreement States would not be required to adopt this guidance, particularly if the NRC's position is in conflict with the state statutes and regulations. On the contrary, absent a rulemaking, the NRC's position might not be implemented consistently by the Agreement States. If a rule is to be promulgated, compatibility Category 3 would be more practical for implementation by Agreement States.

4. It would be helpful if NRC could provide an evaluation of potential benefits and risks associated with intentional blending. This evaluation should include an estimate of reduction in the amount of Class B and C wastes as well as an estimate of increase in the amount of Class A waste; the amount of Class A waste suitable and available to blend with Class B and C wastes; potential impact on occupational exposure; transportation risk of additional shipments of Class A waste, if any; and the availability of transportation casks should this result in a significant increase in the amount of Class A waste.

5. NRC regulations only require waste to be classified when it is ready for disposal although in practice, many generators classify waste before it is shipped for disposal and also prior to interim storage. The advantage of maintaining the NRC's current requirement is that the generators would not be required to classify waste prior to shipment to a processor (unless the processor requires) and as such, there will not be any intentional blending of waste [to change its classification] if the waste has not yet been classified.

6. There will be a need for adequate oversight of the generators to ensure that blending is being performed appropriately. In the case of the nuclear power plants and other generators that are located in states that are not Agreement States, the appropriate NRC regional offices should provide that oversight. Agreement States should provide oversight of blending activities for their respective generators except the nuclear power plants. This recommended approach for oversight should also be applied to the review and approval of a specific blending proposal. The NRC's guidance would be very helpful to ensure consistency and to demonstrate compliance with regulations or requirements for intentional blending.

These comments were formally submitted in writing to NRC by DEP, as well as summarized by a representative of the Commonwealth of Pennsylvania at NRC's recent Commission

meeting on the issue. (See related story, this issue.)

For additional information, please contact Richard Janati of the Commonwealth of Pennsylvania at (717) 787-2163 or at rjanati@state.pa.us.

Central Interstate Compact

Central Interstate Compact Holds Annual Meeting

On June 22, 2010, the Central Interstate Low-Level Radioactive Waste Compact Commission held its Annual Meeting at the Skirvin Hilton Hotel in Oklahoma City, Oklahoma.

The following items were on the agenda for the one-day meeting:

- reports from the Commission Administrator and Legal Counsel;
- ratification of approved export applications;
- approval of minutes of past meetings;
- consideration of the financial consultant contract for fiscal years 2010-11;
- consideration of the draft investment policy;
- review and approval of the Commission's administrative budgets;
- election of the Commission Chairman for fiscal year 2010-11;
- confirmation of date and location of the next Commission meeting; and,
- discussion of personnel matters.

For additional information, please contact Rita Houskie, Office Administrator of the Central Interstate Commission, at (402) 476-8247 or at rita@cillrwcc.org.

Northwest Compact/State of Utah

Utah Issues Blending and Classification Position Statements

The Utah Radiation Control Board has issued Position Statements regarding the Down-Blending of Radioactive Waste and Maintaining Waste Classification System Integrity.

Down-Blending of Radioactive Waste

The Position Statement on the Down-Blending of Radioactive Waste states as follows:

> *The Utah Radiation Control Board (Board) recognizes that down-blended radioactive waste does not pose any unique health and safety issues to the public that are not observed in other classes of low-level radioactive waste. The Board also is aware that down-blending may appear to some as a process to circumvent Utah law, which prohibits any entity in Utah from accepting Class B or Class C low-level radioactive waste for commercial storage, treatment or disposal, Utah Code Ann. 19-3-103.7. However, in order to maintain public confidence in the regulatory process and to protect against unforeseen hazards, the Board issues the following position statements regarding down-blended radioactive waste:*
>
> *1. The Board is opposed to waste blending when the intent is to alter the waste classification for the purposes of disposal site access.*
> *2. Dilution of radioactive wastes with uncontaminated materials should be explicitly prohibited.*
> *3. Current guidance documents dealing with concentration averaging and mixing*

should be updated to address the current understanding of the possible down-blending issues. Important matters dealing with waste blending, such as prohibition of certain practices, currently in guidance should be put into regulation.

Maintaining Waste Classification System Integrity

The Position Statement on Maintaining Waste Classification System Integrity states as follows:

It is the policy of the Utah Radiation Control Board that the radioactive waste classification system be maintained, and that activities of licensees be consistent with maintaining radioactive waste classification categories. As changes in the classification are proposed, activities of licensees should remain consistent with promulgated classification rules.

For additional information, please contact Dane Finerfrock of the Utah Department of Environmental Quality, Radiation Control Board, at (801) 536-4250 or at dfinerfrock@utah.gov.

Utah Approves Depleted Uranium Performance Assessment Rule

On April 13, 2010, the Utah Radiation Control Board voted to approve a Depleted Uranium Performance Assessment Rule, R313-25-8, "Technical Analysis."

The Rule

The rule, which includes changes that resulted from comments received during the proposed rule's public comment period, states as follows:

R313-25-8. Technical Analyses.

(1) The specific technical information shall also include the following analyses needed to demonstrate that the performance objectives of R313-25 will be met:
(a) Analyses demonstrating that the general population will be protected from releases of radioactivity shall consider the pathways of air, soil, ground water, surface water, plant uptake, and exhumation by burrowing animals. The analyses shall clearly identify and differentiate between the roles performed by the natural disposal site characteristics and design features in isolating and segregating the wastes. The analyses shall clearly demonstrate a reasonable assurance that the exposures to humans from the release of radioactivity will not exceed the limits set forth in R313-25-19.
(b) Analyses of the protection of inadvertent intruders shall demonstrate a reasonable assurance that the waste classification and segregation requirements will be met and that adequate barriers to inadvertent intrusion will be provided.
(c) Analysis of the protection of individuals during operations shall include assessments of expected exposures due to routine operations and likely accidents during handling, storage, and disposal of waste. The analysis shall provide reasonable assurance that exposures will be controlled to meet the requirements of R313-15.
(d) Analyses of the long-term stability of the disposal site shall be based upon analyses of active natural processes including erosion, mass wasting, slope failure, settlement of wastes and backfill, infiltration through covers over disposal areas and adjacent soils, and surface drainage of the disposal site. The

analyses shall provide reasonable assurance that there will not be a need for ongoing active maintenance of the disposal site following closure.
(2)(a) Any facility that proposes to land dispose of significant quantities of concentrated depleted uranium (more than one metric ton in total accumulation) after [effective date of rule] shall submit for the Executive Secretary's review and approval a performance assessment that demonstrates that the performance standards specified in 10 CFR Part 61 and corresponding provisions of Utah rules will be met for the total quantities of concentrated depleted uranium and other wastes, including wastes already disposed of and the quantities of concentrated depleted uranium the facility now proposes to dispose. Any such performance assessment shall be revised as needed to reflect ongoing guidance and rulemaking from NRC. For purposes of this performance assessment, the compliance period shall be a minimum of 10,000 years. Additional simulations shall be performed for the period where peak dose occurs and the results shall be analyzed qualitatively.
(b) No facility may dispose of significant quantities of concentrated depleted uranium prior to the approval by the Executive Secretary of the performance assessment required in R.313-25-8(2)(a).
(c) For purposes of this R.313-25-8(2) only, "concentrated depleted uranium" means waste with depleted uranium concentrations greater than 5 percent by weight.

The rule becomes effective June 1, 2010.

Background

In 2009, the State of Utah issued a proposed rule that would require approval of a site-specific performance assessment (SSPA) prior to the shallow land disposal of additional depleted uranium. As proposed, the rule would not become effective immediately.

Given the time lag, the Executive Secretary proposed a license condition for the Energy*Solutions'* Clive facility that would address the disposal of depleted uranium at the site prior to the Board's consideration and final determination about the rule.

The purpose of the license condition, according to the state, is "to provide some immediate and undisputed protection during this interim period, against possible disposal of depleted uranium that is inconsistent with the results of the SSPA." A second purpose is "to provide additional protection for the entire period before NRC completes its regulatory process."

The license condition is not intended to supplant the rule, which may provide for more restrictive requirements on the disposal of depleted uranium, nor foreclose the possibility of further orders by the Executive Secretary.

A public comment period on the issue was established from November 23, 2009 through December 23, 2009.

In February 2010, the Division of Radiation Control issued a written document providing responses to pubic comments on the issue.

License Amendment 7, which incorporates revision to License Condition 35 regarding the additional requirements for disposal of large quantities of depleted uranium, may be found at http://www.radiationcontrol.utah.gov/EnSolutions/License/licenseamend7.pdf.

Responses to public comments on License Condition 35 may be found at http://www.radiationcontrol.utah.gov/EnSolutions/License/publicparticpation.pdf.

For additional information, please contact Dane Finerfrock of the Utah Department of Environmental Quality, Radiation Control Board, at (801) 536-4250 or at dfinerfrock@utah.gov.

Utah Seeks Comments re Prospective Performance Assessment Rule

In early May 2010, the Utah Radiation Control Board announced that it is considering whether to propose a rule that would require site-specific performance assessments in some situations, and that would provide direction about how performance assessments should be done.

Prior to beginning the formal rulemaking process, the Board is seeking advance comment about the rule. Comments received will help the Board determine whether to propose the rule, and whether to adjust the requirements or language of the rule.

For additional information, please go to the Division of Radiation Control website at: http://www.radiationcontrol.utah.gov/Board/rule_r313258.pdf .

Background

According to the Board, "performance assessment is one of the primary tools to help determine levels of risk, to characterize potential hazards, and to demonstrate compliance associated with certain regulated activities."

As proposed, the rule would give the Board—which is charged with protecting public health and safety, as well as enforcing compliance—the authority to require a performance assessment before certain activities take place when there are questions regarding health and safety and/or compliance issues associated with the activity in question.

In addition, the proposed rule would clarify that a licensee must conduct a performance assessment before the activity occurs or continues to be exercised in situations if impacts from those activities have not been clearly considered through existing regulation or established guidance.

Text

The text of the proposed rule is as follows:

R313-25-8. Technical Analyses.

1. *A site-specific performance assessment shall be performed prior to accepting any radioactive waste when:*
    a. *Required by the Executive Secretary;*
    b. *Required by the Board; or*
    c. *Classification of the waste is not specifically defined by regulation or by established guidance that is directly applicable to the waste in question.*
2. *A site-specific performance assessment shall:*
    d. *Be performed in the context of the entire site radionuclide inventory of the radionuclide(s) in question;*
    e. *Evaluate the site-specific appropriateness at the time of maximum hazard, taking into account the performance objectives in R313-25; and*
    f. *Demonstrate that the facility is at least as likely as not to be able to meet performance objectives.*

[Remaining sections of the rule would be renumbered accordingly.]

Comments

Public comments on the proposed rule are due before the close of business on July 1, 2010.

Comments may be submitted electronically at dfinerfrock@utah.gov. Comments may also be mailed to:

Division of Radiation Control
State of Utah
PO Box 144850
Salt Lake City, UT 84114-4850

For additional information, please contact Dane Finerfrock of the Utah Department of Environmental Quality, Radiation Control Board, at (801) 536-4250 or at dfinerfrock@utah.gov.

Comments Sought re Clive Groundwater Discharge Permit

The Utah Department of Environmental Quality (DEQ) is requesting public comments regarding proposed changes by the Co-Executive Secretary of the Utah Water Quality Board to the existing Energy*Solutions'* Ground Water Quality Discharge Permit, No. UGW450005, for the low-level radioactive waste disposal facility located at Clive, Utah.

Major permit modifications associated with this permit modification include, but are not limited to: (1) increase the time that a waste disposal cell can remain open without cover construction from 12 to 17 years, and (2) ground water protection level adjustment for Gross Alpha in monitoring well I-1-30.

A public meeting will be held on the issue at the DEQ's offices in board room 1015 beginning at 6:00 p.m. on July 7, 2010.

Written comments may be submitted through the close of business on July 12, 2010. They should be submitted to the Utah Division of Radiation Control, 195 North 1950 West, PO Box 144850, Salt Lake City, UT 84114-4850 or via e-mail to charlesbishop@utah.gov.

The Statement of Basis, which includes the modified draft Permit, can be found at www.radiationcontrol.utah.gov.

For additional information, please contact Dane Finerfrock of the Utah Department of Environmental Quality, Radiation Control Board, at (801) 536-4250 or at dfinerfrock@utah.gov.

Utah DEQ Moves Offices

Dane Finerfrock Retires

Effective April 26, 2010, the Division of Radiation Control of the Utah Department of Environmental Quality moved its offices across the street from its old location. The new office address is 195 North 1950 West in Salt Lake City, Utah. Contact information remains the same, including phone and PO Box information.

In addition, effective at the end of June 2010, Dane Finerfrock will retire from his role with the State of Utah. Rusty Lundberg will take over as the new Director of the Division of Radiation Control. Lundberg can be reached at rlundberg@utah.gov or at (801) 536-4250.

The mission of the Department of Environmental Quality is "to safeguard human health and quality of life by protecting and enhancing the environment."

For additional information, please contact the Utah Department of Environmental Quality, Radiation Control Board, at (801) 536-4250.

Rocky Mountain Compact/State of New Mexico

International Isotopes and Louisiana Energy Services Enter Into a Uranium De-Conversion Services Agreement

On April 19, 2010, International Isotopes Inc. announced that it has entered into an agreement with Louisiana Energy Services (LES) to provide depleted uranium de-conversion services for the URENCO USA facility located in Eunice, New Mexico. The URENCO USA facility, formerly known as the National Enrichment Facility, is expected to begin commercial enrichment operations this spring. LES is a wholly owned subsidiary of URENCO.

Background

International Isotopes plans to construct the first ever uranium de-conversion and fluorine extraction processing facility at a location west of Hobbs, New Mexico—which is approximately 30 miles from the URENCO USA facility. As planned, the facility will accept depleted uranium hexafluoride from enrichment facilities such as URENCO USA for fee-based de-conversion services.

Depleted uranium hexafluoride is a product of uranium enrichment, a process necessary to make uranium useable as reactor fuel. After the depleted uranium hexafluoride is de-converted by International Isotopes into uranium tetrafluoride, the uranium tetrafluoride can be used as the feedstock for International Isotopes fluorine extraction process (FEP).

The FEP is a patented process that can produce high-purity fluoride gas products from the depleted uranium tetrafluoride. These high value products enjoy a robust current market in the world.

In 2004, International Isotopes purchased the patents for the FEP. Since 2006, International Isotopes has been operating its FEP gas facility in Idaho—including testing components and analytical processes for the larger New Mexico facility.

License Application

During 2009, International Isotopes made significant progress on the project including completion of the conceptual design and signing an agreement with the New Mexico Environment Department. On December 30, 2009, International Isotopes submitted a license application to the U.S. Nuclear Regulatory Commission.

According to the application, the proposed facility would process depleted uranium hexafluoride into commercially resalable fluoride products and depleted uranium oxide for disposal. The plant would be capable of deconverting up to 7.5 million pounds per year of depleted uranium hexafluoride provided by commercial enrichment facilities throughout the United States.

On February 23, 2010, NRC docketed the application, thereby accepting it for formal review. The agency announced availability of the license application on April 13, 2010. (See *LLW Notes,* March/April 2010, p. 12.)

An opportunity to request a hearing on the application, as well as instructions for filing a request for hearing and petition to intervene, were published in the *Federal Register* on April 5, 2010. The deadline for requesting a hearing is June 4, 2010.

International Isotopes license application and information on the NRC review process can be found at http://www.nrc.gov/materials/fuel-cycle-

fac/ininfacility.html. Information on filing a hearing request can be found at http://edocket.access.gpo.gov/2010/pdf/2010-7600.pdf.

The Agreement

The agreement is contingent upon International Isotopes meeting certain performance milestones in the construction and planned start-up of its facility by the end of 2013. The agreement provides that LES will provide certain minimum volumes of depleted material to International Isotopes for de-conversion with the option to process further material. The term of the agreement extends for the first five years of operation of International Isotopes planned de-conversion facility.

According to International Isotopes, the agreement represents one of four potential revenue streams that the company anticipates will be produced by the planned facility. In addition to payment for de-conversion services under the LES agreement and from other potential enrichment facilities, International Isotopes intends to sell anhydrous hydrofluoric acid and valuable industrial fluoride gases that are each extracted during the de-conversion and FEP processes, respectively. The gases can be used to make various products such as silicon for solar cells and computer chips. The agreement with LES also calls for International Isotopes to provide some ancillary "for-fee" services, such as uranium hexafluoride cylinder cleaning, inspection and re-testing.

Comments and Remarks

Steve Laflin, President and Chief Executive Officer of International Isotopes, made the following statement in regard to the LES agreement:

> *[International Isotopes] is extremely pleased to have this agreement with LES in place. Once our planned facility is constructed and operational, it will provide [International Isotopes] with an important first customer for our planned facility, and it provides LES with expanded options in the management of its depleted uranium inventory and a range of additional value-added assets. LES is a leader in our country's expanded commercial enrichment activities, and the opening of URENCO USA is a landmark event. We believe that the completion of the de-conversion services agreement with LES is important to our business planning and to the future financing of the project. We have long believed it is important to establish a commercial option for dealing with depleted uranium from the front-end of the fuel cycle, and this agreement confirms the enrichment industry's interest in that commercial option. By combining de-conversion with FEP, the [International Isotopes] facility will provide a unique way to address the by-product of uranium enrichment and recycle it into gasses that are being used today in a host of industrial product manufacturing applications. This is a major step for the Company and its shareholders.*

Gregory Smith, Chief Operating Officer and Chief Nuclear Officer for URENCO USA, made the following statement in regard to the agreement:

> *We are happy to welcome [International Isotopes] to Lea County, NM. LES found a home here almost five years ago and we're delighted when a good business decision aligns so well with the LES commitment to support the Lea County EnergyPlex.*

LES Authorized to Commence Operations

On June 10, 2010, the U.S. Nuclear Regulatory Commission announced that the agency has completed its readiness review of the Louisiana Energy Services' (LES) gas centrifuge uranium enrichment plant in Lea County, New Mexico. LES is a subsidiary of URENCO, a company that has been using centrifuge technology in Europe for more than 30 years. NRC staff concluded that the facility could begin operation of the first cascade—a series of rotating cylinders using centrifugal force to separate uranium isotopes—under its NRC license.

The LES URENCO USA Facility, formerly known as the National Enrichment Facility, is located near the town of Eunice, New Mexico. It was granted a license from the NRC in June of 2006 and shortly thereafter began construction of the site's buildings, centrifuges and security structures. Pursuant to the license, LES may enrich up to five percent of the isotope uranium-235 for use in the manufacture of nuclear fuel for commercial nuclear power plants.

During construction of the LES facility, NRC inspectors conducted extensive evaluations to independently assess whether the plant was built in accordance with its design and NRC regulations. Upon completion of construction, further detailed NRC inspections were conducted to review safety systems, training, operating procedures, security and other aspects of safe facility operation before the agency authorized operation of the enrichment facility's first cascade.

"Our inspectors have examined not only the construction and testing of systems, but the additional factors, including training and procedures," said NRC Region II Administrator Luis Reyes. "Even after the first centrifuge is started, we will continue to inspect the operation to ensure the protection of people and the environment in the area."

NRC staff plans to hold a public meeting in the local county soon to discuss the decision to authorize operation as well as the continuing oversight and inspection.

The LLW Forum provided an optional site tour of the LES plant—along with the Waste Control Specialists LLC facility in Andrews County, Texas—to attendees after its fall 2010 meeting in Texas.

For additional information, please contact Clint Williamson of Louisiana Energy Services at (505) 975-3335 or at cwilliamson@nefnm.com.

Southeast Compact

Nominations Sought for 2011 Hodes Award

The Southeast Compact Commission for Low-Level Radioactive Waste Management is seeking nominations for the 2011 Richard S. Hodes, M.D. Honor Lecture Award—a program that recognizes an individual, company, or organization that contributed in a significant way to improving the technology, policy, or practices of low-level radioactive waste management in the United States. The award recipient will present the innovation being recognized at a lecture during the Waste Management '11 Symposium in Phoenix, Arizona. The award recipient will receive a $5,000 honorarium and all travel expenses will be paid.

Background

Dr. Richard S. Hodes was a distinguished statesman and a lifetime scholar. He was one of

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

Past Recipients

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

- W.H. "Bud" Arrowsmith (2004);
- Texas A & M University Student Chapter of Advocates for Responsible Disposal in Texas (2004 *honorable mention*);
- William Dornsife (2005);
- California Radioactive Materials Management Forum (2006);
- Larry McNamara (2007);
- Michael Ryan (2008);
- Susan Jablonski (2009); and,
- Larry Camper (2010).

The Award

The Richard S. Hodes Honor Lecture Award—established in March, 2003—is awarded to an individual, company, or organization that contributed in a significant way to improving the technology, policy, or practices of low-level radioactive waste management in the United States. The award recipient will be recognized with a special plaque and an invitation to present a lecture about the innovation during the annual international Waste Management Symposium (WM '11). The 2011 symposium is being sponsored by the University of Arizona and will be held in Phoenix, Arizona in the spring of 2011. A special time is reserved during the Symposium for the lecture and the award presentation. The Southeast Compact Commission will provide the award recipient a $5,000 honorarium and will pay travel expenses and per diem (in accordance with Commission Travel Policies) for an individual to present the lecture.

Criteria

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

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

The criteria for selection include:

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

Eligibility

To be eligible for the award, the individual/group must consent to being nominated and must be

willing to prepare and present a lecture about the innovation being recognized at the Waste Management Symposium. Individuals or organizations can nominate themselves or another individual, company, institution, or organization.

Nominations

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

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

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

Nominations must be received by June 30, 2010.

Southwestern Compact/South Dakota

ASLB Hears Argument re Uranium Recovery License Application

On June 8-9, 2010, an Atomic Safety and Licensing Board (ASLB) panel heard oral argument in Custer, South Dakota regarding requests from the Oglala Sioux Tribe and a group termed the Consolidated Petitioners for a hearing on the Powertech USA uranium recovery license application for sites near Custer, South Dakota. The board is an independent quasi-judicial arm of the U.S. Nuclear Regulatory Commission that decides legal challenges to applications and proposed licensing actions by the agency.

Powertech USA submitted its application on February 25, 2009, and supplemented it on August 10, 2009, for an NRC license to operate the proposed Dewey-Burdock in situ uranium recovery facility in Fall River and Custer counties. In situ recovery facilities inject liquid into underground uranium ore bodies and then pump the uranium-bearing solution out and separate the uranium for further processing.

The ASLB is considering whether the Oglala Sioux Tribe and the Consolidated Petitioners should be granted intervenor status in the proceeding. The Oglala Tribe has submitted 10 contentions and the Consolidated Petitioners have submitted a total of 11 contentions challenging various aspects of Powertech's application.

Documents related to the Powertech USA license application are available on the NRC web site at http://www.nrc.gov/info-finder/materials/uranium/apps-in-review/dewey-burdock-new-app-review.html.

Texas Compact

Texas Compact Commission Meets in Andrews in June

Votes to Revise Proposed Import & Export Rules

The Texas Low-Level Radioactive Waste Disposal Compact Commission met in Andrews, Texas on June 12, 2010. The Commission had originally been scheduled to meet on May 11, 2010, but postponed the meeting in order to provide additional time to properly consider and respond to the over 2,000 comments that were received on proposed rules that would govern the export and import of low-level radioactive waste from and to the compact region, as well as to ensure absolute compliance with the Texas Administrative Procedures Act.

During the course of the meeting, the Commission considered significant changes to its proposed

rulemaking on the exportation and importation of low-level radioactive waste. As a result, the Commission unanimously voted to withdraw the rulemaking as initially published and to later repost it with the identified amendments and revisions.

An agenda for the meeting was posted in the Texas Register and on the Texas Compact Commission web site at http://www.tllrwdcc.org.

For additional information, please contact Margaret Henderson, Interim Executive Director of the Texas Compact Commission, at (512) 820-2930 or at margaret.herderson@tllrwdcc.org.

Agenda Items: Overview

The following items, among others, were on the agenda for the June 12 meeting of the Texas Compact Commission:

- presentation on compact disposal facility site geology;
- presentation on compact disposal facility economics;
- public comment regarding proposed adoption of rules on the exportation and importation of waste *(tentative);*
- comment from elected officials regarding proposed adoption of rules on the exportation and importation of waste;
- discussion and possible action on funding, budget and commission operations;
- discussion and possible action to contract or hire for services necessary to carry out commission duties and functions including renewal of the Interim Executive Director contract (as amended for consultant services), legal representation for actions of the commission, and other services as determined by the commission;
- discussion and possible action to amend commission travel budget for fiscal years 2010 and 2011;
- discussion and possible action on legislative appropriations request for the commission for fiscal years 2012 and 2013;
- discussion and possible action on request for the Texas Radiation Advisory Board (TRAB) to perform an independent review and make recommendations and provide technical advice to the Texas Commission on Environmental Quality (TCEQ) and the Texas Compact Commission regarding compact disposal facility license conditions that might be inconsistent with the policy and purpose of the compact with regard to matters of adequate protection of worker and public health and safety and the environment and the economical management of the compact disposal facility;
- consideration of and possible vote to approve party state generator requests/petitions to dispose of low-level radioactive waste in disposal facilities outside of the Texas Compact—including at Energy*Solutions'* facility in Clive, Utah and US Ecology's facility in Grandview, Idaho—pursuant to the commission's resolution dated December 11, 2009;
- discussion and possible action on commission bylaws;
- agenda items for next meeting; and,
- selection of next meeting date and location.

Agenda Item: Import/Export Rule

The Texas Compact Commission began considering export and import issues during two stakeholder meetings on August 7 and December 10, 2009. (See *LLW Notes*, July/August 2009, pp. 15-16 and November/December 2009, pp. 11-12.)

Subsequently, during a meeting on January 22, 2010, the Commission approved the publication of proposed rules governing the exportation and importation of low-level radioactive waste from the compact region by vote of five to two. The proposed rules were published in the *Texas Register* (35 *Texas Register* 1028) on February 12, 2010. Upon publication, a 60-day comment period was initiated. (See *LLW Notes*, January/February 2010, pp. 15-19.)

After publication of the proposed rules, the Commission held two public hearings on April 5, 2010 (in Austin) and April 6, 2010 (in Andrews), in order to allow additional comment on the proposed rule. The comment period on the rule closed on April 13, 2010.

On April 29, 2010, a working group of the Commission's Rules Committee then met in Arlington, Texas. The purpose of the meeting was to discuss and draft responses to comments and proposed revisions to the preamble and text of the proposed rules. (See *LLW Notes*, March/April 2010, pp. 16-17.)

The agenda for the June 12 meeting specifically stated that the Commission would not take final action on the adoption of the proposed rules. Instead, the Commission planned to

- discuss and possibly take action on changes in language to the draft provided by the Rules Committee; and,
- discuss and possibly take action on changes in language to the draft order adopting rule (including amending preamble analyses, response to comments, and any other changes suggested by the Rules Committee), changes necessary in response to comment, or any other modifications otherwise necessary to conform the order adopting rule to the revised rule text.

During the June 12 meeting, the Commission voted to withdraw the proposed rule as published. In addition, the Commission stated their intent to use the revised proposed rule as the starting point for a new rulemaking effort, approving the addition of a new section on importation of waste for management purposes only.

The Commission plans to schedule another meeting to discuss and possibly take action on a new proposed rulemaking on waste exportation and importation. At this time, however, a meeting date has not been set. The LLW Forum will notify its membership when the meeting is scheduled and revised proposed rules are made available.

Compact Commission

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

Michael Ford of Amarillo was named as Chairman and John White of Plano was named as Vice Chairman. Both terms are set to expire on November 25, 2014. In addition to Ford and White, Governor Perry appointed four other members to the Texas Commission including Richard Dolgener, Bob Gregory, Kenneth Peddicord, and Robert Wilson. Uldis Vanags and Stephen Wark have been appointed to represent the State of Vermont on the Compact 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.)

License Application Status

On January 14, 2009, by a vote of 2 to 0, TCEQ Commissioners denied hearing requests and approved an order on Waste Control Specialists LLC (WCS) Radioactive Material License application, No. R04100. (See *LLW Notes*, January/February 2009, pp. 1, 9-11.) Following the completion of condemnation proceedings and the acquisition of underlying mineral rights, TCEQ's Executive Director signed the final license on September 10, 2009. (See *LLW Notes*, September/October 2009, pp. 1, 12-13.) Facility

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Texas Compact/State of Texas

WCS Files Proposed LLRW Disposal Rates

On June 1, 2010, Waste Control Specialists LLC (WCS) filed an application with the Texas Commission on Environmental Quality (TCEQ) to establish the maximum disposal rates for commercial low-level radioactive waste disposal at its planned facility in Andrews County, Texas.

The filing included two alternative proposed rate schedules: one reflecting unlimited disposal for generators in the Texas Compact states of Texas and Vermont, and a second based on unlimited disposal by Texas Compact generators and limited disposal by generators from outside of the Texas Compact region.

The WCS' Application has been uploaded on TCEQ's website for public viewing at http://www.tceq.state.tx.us/permitting/radmat/licensing/rates. TCEQ will periodically update the Current Status section of this web page as to where the agency is at in terms of its review of the application and to post upcoming stakeholder meetings.

For additional information, please contact Sage Chandrasoma of TCEQ directly by electronic mail at schandra@tceq.state.tx.us or at 512/ 239-6069.

Rate Setting Application

TCEQ is charged with establishing the maximum disposal rates that may be collected for the disposal of compact waste under Chapter 336, Subchapter N of the agency's rules. Under TCEQ rules, disposal rates may be based on the cost of operating the disposal facility and a reasonable rate of return—including allowable expenses, the funding of local public projects, the provisions of a revenue requirement comprised of a return of and on its investments, and the payment of other required fees and expenses. Estimated volumes of the various types of low-level waste expected to be disposed at the facility are then used to determine the maximum disposal rates for each type of waste.

The rate setting application filed by WCS also provides information for consideration by the TCEQ in the determination of an appropriate inflation adjustment, volume adjustment, extraordinary volume adjustment, and relative hazard.

Most of WCS' operating costs are fixed. Accordingly, the company argues in a press release that limited importation of waste from outside of the compact region will spread said costs across more users, thereby resulting in lower rates for Texas Compact generators.

"On average, disposal rates will be 10 times lower with limited importation of waste from non-Compact generators," said William Lindquist, Chief Executive Officer of WCS. "Importation of waste for disposal clearly plays a vital role in providing the Texas Compact generators with the lowest disposal rates possible which savings can be passed on to their customers."

Lindquist cautioned that the rate setting application represents the maximum disposal rates and does not necessarily reflect lower market rates that may be charged upon negotiation with various generators. He estimates that such market rates will likely be "favorably comparable" to those previously paid by most commercial generators at the Barnwell facility in South Carolina.

For the calculation assuming no allowable importation of waste from outside of the compact region, WCS estimated disposal of 65,000 cubic feet of low-level radioactive waste from compact generators. For the calculation assuming the allowance of waste importation from outside of the compact region, WCS estimated the disposal

of an additional 37,000 cubic feet of low-level radioactive waste from non-compact generators, for a total disposal estimate of 102,000 cubic feet of low-level radioactive waste.

WCS is requesting that TCEQ approve the disposal rates in its application by expedited rulemaking as the maximum disposal rates under section 336.1309 of the TCEQ's rules.

Statement from TCEQ

Upon receipt of WCS' rate setting application package, the TCEQ released the following statement:

> *On June 1, 2010, the Texas Commission on Environmental Quality (TCEQ) received Waste Control Specialists' (WCS) Disposal Rate Application (Application) Package to establish proposed disposal rates for low-level radioactive waste at the planned Compact Waste Disposal Facility in Andrews, Texas. The Application includes two disposal rate calculations where one proposed rate calculation is based on receiving from Texas and Vermont and a second proposed rate calculation is based on receiving import waste from other non-compact states and the other. The Application will be reviewed by TCEQ to determine an equitable allocation of the allowable disposal cost that can be charged to the Texas Compact waste generators, including the establishment of a rate of return and a fee schedule based on radioactive, physical, and chemical properties of each type of low-level radioactive waste consistent with Texas Health & Safety Code Chapter 401.*

License Application Status

On January 14, 2009, by a vote of 2 to 0, TCEQ Commissioners denied hearing requests and approved an order on Waste Control Specialists LLC (WCS) Radioactive Material License application, No. R04100. (See *LLW Notes,* January/February 2009, pp. 1, 9-11.) Following the completion of condemnation proceedings and the acquisition of underlying mineral rights, TCEQ's Executive Director signed the final license on September 10, 2009. (See *LLW Notes,* September/October 2009, pp. 1, 12-13.) Facility construction may not commence, however, until certain pre-construction requirements have been fulfilled and the TCEQ Executive Director has granted written approval.

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

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

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

Texas Compact/State of Vermont

Report Issued re Vermont Yankee Groundwater Contamination

In late May 2010, U.S. Nuclear Regulatory Commission staff issued an inspection report on groundwater contamination issues at the Vermont Yankee nuclear power plant. The plant is located in Vernon (Windham County), Vermont. It is operated by Entergy Nuclear.

The focus of the inspection was Entergy's response to the leakage of radioactive liquid into groundwater at the site identified earlier this year, as well as the company's implementation of the Groundwater Protection Initiative (GPI) instituted by the nuclear power industry in 2007. The report provides NRC staff's analysis that extensive reviews have found that Entergy took prompt and effective action to identify the source of the leakage, halt it and develop an effective plan to address any resulting groundwater contamination. With respect to the GPI, however, NRC staff found that some voluntary aspects of the initiative were not completed.

"Based on the results of this inspection, the NRC determined that Entergy-Vermont Yankee (ENVY) appropriately evaluated the contaminated groundwater with respect to off-site effluent release limits and the resulting radiological impact to public health and safety; and that ENVY complied with all applicable regulatory requirements and standards pertaining to radiological effluent monitoring, dose assessment, and radiological evaluation," the report states. "No violations of NRC requirements or findings of significance were identified."

NRC notes that the affected groundwater at Vermont Yankee is not used for drinking-water purposes. With respect to any groundwater from the site migrating to the nearby Connecticut River, there is an estimated dose of 0.000035 millirems of maximum exposure to members of the public from contaminated groundwater reaching the waterway according to a calculation performed by Entergy that was independently verified by NRC. The average American is exposed to about 620 millirems of radiation each year from natural and manmade sources.

NRC continues to closely monitor and assess Entergy's investigation, conclusions, and remedial actions to resolve the situation. NRC also plans to continue to verify that the plant meets the rigid standards set by federal authorities.

A copy of the Vermont Yankee report may be found at http://www.nrc.gov/NRR/OVERSIGHT/ASSESS/listofrpts_body.html.

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construction may not commence, however, until certain pre-construction requirements have been fulfilled and the TCEQ Executive Director has granted written approval.

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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.

Conference of Radiation Control Program Directors (CRCPD)

CRCPD Passes Resolution re Disposal of Radioactive Sources

On April 22, 2010, the Conference of Radiation Control Program Directors (CRCPD) passed a resolution relating to the disposal of radioactive sources.

The resolution was passed during the 42nd National Conference on Radiation Control, which was held at the Hyatt Regency Newport Hotel & Spa in Newport, Rhode Island.

Background

CRCPD is a 501(c)(3) nonprofit, non-governmental professional organization dedicated to radiation protection. The organization's mission is "to promote consistency in addressing and resolving radiation protection issues, to encourage high standards of quality in radiation protection programs, and to provide leadership in radiation safety and education."

CRCPD's primary goal is to assure that radiation exposure to individuals is kept to the lowest practical level, while not restricting its beneficial uses.

The organization's membership is open to anyone with an interest in radiation protection—although it's core members consist of radiation professionals in state and local government that regulate the use of radiation sources.

Resolution

The text of the April 2010 resolution states as follows:

WHEREAS: *Despite the best efforts of many individuals and organizations, options for disposal of orphan, unwanted or disused radioactive sealed sources (sources) or other discrete radioactive material are severely limited in most parts of the country; and*

WHEREAS: *The potential loss of control of sources or discrete radioactive material may endanger the nation's security; and*

WHEREAS: *The withdrawal of disposal access and limitations on inter-Compact transfer of sources or discrete radioactive material has eliminated disposal options for most of the country; and*

WHEREAS: *Options for packaging of Type B (higher activity) quantities of material for transportation, necessary for disposition under any of the available disposal options, are severely limited despite the temporary accommodation by the U.S. Department of Transportation; and*

WHEREAS: *Recent events highlight the vulnerability of the U.S. medical community to interruptions in the supply of short half-life medical isotopes for which there is currently no domestic source of production; and*

WHEREAS: *State licensing programs may understandably be reluctant to license new sources or new production facilities in the absence of practical disposal options; and*

WHEREAS: *State and Federal programs have had to resort to complicated ad hoc arrangements to ensure the safe and secure disposition of large numbers of unwanted or disused radioactive sources; and*

WHEREAS: *The withdrawal of disposal access and limitations on inter-Compact transfer of unwanted or disused sources has frustrated the expectations of licensees who consigned their materials in good faith to disposal brokers who may not be able now to fulfill their contractual obligations; and*

WHEREAS: *Despite the current development of some new disposal facilities, it is not clear that these new facilities will provide a comprehensive solution under the current regulatory climate; and*

WHEREAS: *Federal agencies are severely limited in their ability to offer disposal access beyond the narrow limits of their statutory charters; and*

WHEREAS*: The aforementioned limitations and absences have the potential to threaten vital medical care, and academic pursuit and industrial innovation as well as the security of the United States.*

NOW, THEREFORE, BE IT RESOLVED:

That the Conference of Radiation Control Program Directors (CRCPD) Board of Directors will identify specific avenues and allocate resources and responsibilities to specific CRCPD parties to publicize these issues and that the best efforts of the CRCPD and its member entities be used to facilitate and inform activities to include but not be limited to:

- *Continuing the CRCPD effort to examine the scope and nature of the disposal dilemma faced by users, owners, and regulators of sources and discrete radioactive material while building on data accumulated by the Global Threat Reduction Initiative Off-site Source Recovery Project and CRCPD Source Collection and Threat Reduction Program;*
- *Examining and identifying existing statutory or regulatory limitations on disposal of sources and discrete radioactive material to provide additional disposal options;*
- *Encouraging the continued support of the Federal process of developing a Greater-than-Class C waste disposal facility; and*
- *Identifying current storage requirements and options and "recommending best practices" for safe, secure, long-term storage prior to eventual disposal of sources and discrete radioactive material.*

The resolution was approved by the CRCPD membership at a meeting on April 22, 2010. It was signed by the organization's Past-Chairperson, Adela Salame-Alfie.

For additional information, please contact CRCPD's Executive Director, Ruth McBurney, at (502) 227-4543 or at rmcburney@crcpd.org. You may also go to the organization's web site at www.crcpd.org.

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interested in a more detailed analysis are referred to the opinion itself.

Plaintiff's Exceptions

Exception One:

The Plaintiffs' first exception challenges the Special Master's conclusion that the Commission lacked authority to impose monetary sanctions upon North Carolina. The Court looked to the terms of the Compact—and, in particular, Article 4(E) which sets forth the Commission's duties and powers—to determine that question. The Court found it compelling that, although Article 4 (E) identified specific powers, the authority to impose monetary sanctions is "conspicuously absent." Such absence, according to the Court, is "significant."

The Court rejected Plaintiffs' arguments that this authority could be found in other provisions of the Compact. Citing definitions from various dictionaries, the Court likewise rejected Plaintiffs' assertion that the term "sanctions" naturally includes monetary penalties—ultimately ruling that "context dictates precisely which 'sanctions' are authorized … and nothing in the Compact suggests that these include monetary measures." The Plaintiffs relied on Article 7(F) of the Compact, which reads: "Any party state which fails to comply with the provisions of this compact or to fulfill the obligations incurred by becoming a party state to this compact may be subject to sanctions by the Commission, including suspension of its rights under this compact and revocation of its status as a party state." The Court acknowledged that references to specific sanctions contained in Compact language are "arguably mere examples," but held that they do establish "illustrative application[s] of the general principle."

The Court also pointed to Article 3 of the Compact in support of its finding. Article 3 provides that "The rights granted to the party [S]tates by this compact are additional to the rights enjoyed by sovereign states, and nothing in this compact shall be construed to infringe upon, limit, or abridge those rights." According to the Court, construing compact language "to authorize monetary sanctions would violate this provision, since the primeval sovereign right is immunity from levies against the government."

Finally, the Court undertook a comparison of the Compact's terms with those of other low-level radioactive waste compacts that were contemporaneously approved by Congress. The Court found that three of these compacts—including the Northeast Compact, Central Midwest Compact, and Central Interstate Compact—expressly authorize their commissions to impose monetary sanctions against parties to the compact. The Southeast Compact " 'clearly lacks the features of these other compacts, and we are not free to rewrite it' to empower the Commission to impose monetary sanctions," stated the Court.

Exception Two:

As their second exception, the Plaintiffs argued that North Carolina could not avoid monetary sanctions by withdrawing from the Compact. Since the Court found that the Compact does not authorize the Commission to impose monetary sanctions, however, it held that the issue is moot.

Exception Three:

The Plaintiffs' third exception also pertains to the Commission's sanctions resolution—that North Carolina forfeited its right to object to a monetary penalty by failing to participate at the sanctions hearing. The Court found, however, that the Plaintiffs failed to argue this exception and cited no law in support of its proposition that North Carolina's refusal to participate in the sanctions hearing constituted a forfeit. The Court therefore deemed the exception "wisely abandoned," commenting that it was "meritless."

Exception Four:

As their fourth exception, the Plaintiffs challenge the Special Master's recommendation that no binding effect or even deference be accorded to the Commission's conclusion that North Carolina violated the Compact.

As a starting point for its analysis, the Court noted that it is bound by the Commission's conclusion of breach only if there is "an explicit provision or other clear indicatio[n]" in the Compact making the Commission the "sole arbiter of disputes" regarding a party state's compliance with the Compact.

To this end, Plaintiffs point to Article 7(c), which states: "The Commission is the judge of the qualifications of the party [S]tates and of its members and of their compliance with the conditions and requirements of this compact and the laws of the party [S]tates relating to the enactment of this compact."

The Court held, however, that the "Plaintiffs greatly over read this provision"—finding that the context clearly limits the Commission's authority to judge to specific instances contained within the Article. The Court did, nonetheless, acknowledge that the granting of the power to sanction under Article 7(F) does provide the Commission with the authority to interpret the Compact or to say whether a party state violated its terms. It simply found that the express terms of the Compact do not identify the Commission as the "sole arbiter" of North Carolina's compliance.

"[U]nless the text of an interstate compact directs otherwise, we do not review the actions of a compact commission 'on the deferential model of judicial review of administrative action by a federal agency,'" stated the Court. Accordingly, the Court held that it would exercise its independent judgment as to both fact and law in serving as the "exclusive" arbiter of controversies between the states.

Exception Five:

As their fifth exception, the Plaintiffs dispute the Special Master's rejection of their claim that North Carolina breached the Compact when, in December 1997, it ceased all efforts toward obtaining a license.

The Court's analysis here focused on whether or not the State continued to take "appropriate steps" toward the filing and granting of a license application. In this regard, the Court noted "Article 5(c) of the [Compact] does not require North Carolina to take any and all steps to license a regional disposal facility; only those that are 'appropriate.'" Again turning toward the dictionary's definition of the term, the Court pointed out that "appropriate" does not equal "necessary." In addition, the Court found that the parties' course of performance under the Compact "is highly significant" in determining whether North Carolina failed to take appropriate steps.

In the end, the Court ruled that "the history of the Compact consists entirely of shared financial burdens" and that North Carolina was not expected "to proceed with the very expensive licensing process without any external financial assistance." In support of this finding, the Court noted, among other things, that North Carolina made clear from the beginning of the process that it would require financial assistance and that the Commission did indeed provide the vast majority of the required funding. The Court further determined that it would be unfair to require North Carolina to continue expending its own funds at the same level it had previously once the Commission refused to provide any further financial assistance. To do so, stated the Court, would have been a waste of taxpayer dollars on what appeared to be a "futile effort."

Continuing with its analysis, the Court found that "nothing in the terms of the Compact required North Carolina either to provide 'adequate funding' for or to 'beg[i]n construction' on a regional facility." According to the Court, this

omission is in stark contrast to other contemporaneously enacted low-level radioactive waste compacts—including the Central Midwest Compact, the Midwest Compact and the Rocky Mountain Compact. The difference, says the Court, is "telling."

The Court was also not moved by the argument that the rotating host requirement necessarily implies that North Carolina is to bear sole financial responsibility for the licensing and construction costs of the facility. In this regard, the Court noted that other compacts—including the Central Interstate Compact and Northeast Compact—at least provide that the host state will recoup its costs through disposal fees. Such a provision, acknowledged the Court, could arguably suggest that the host state is to bear the costs. In the case at hand, however, the Court found that the Southeast Compact contains no such language.

Exception Six:

The Plaintiffs' sixth exception challenges the Special Master's rejection of their alternative argument that North Carolina repudiated the Compact when the State announced that it would not take further steps toward obtaining a license. In essence, the Plaintiffs argue that North Carolina's announcement that it was shutting down the project constituted a refusal to tender any further performance under the contract.

Here, the Court states that "[a] repudiation occurs when an obligor either informs an obligee 'that the obligor will commit a breach that would of itself give the obligee a claim for damages for total breach' … or performs 'a voluntary affirmative act which renders the obligor unable or apparently unable to perform without such a breach.'" The Court ruled that neither event occurred in the case at hand.

In this regard, the Court found that North Carolina never informed the Plaintiffs that it would not fulfill its obligations to take appropriate steps toward obtaining a license, but rather it refused to take additional steps that were not appropriate. Nor did the Court agree that the State took an affirmative act that rendered it unable to perform. To the contrary, states the Court, North Carolina continued to fund the Authority for almost two years, maintained records, and preserved the work completed to date.

Finally, the Court rejected the Plaintiffs' additional argument that a repudiation was effected by the State's refusal to take further steps toward licensing "except on conditions which go beyond the terms of the Compact"—i.e., the provision of external financial assistance. Here, as before, the Court held that the Compact contemplated such assistance.

Exception Seven:

In their final exception, the Plaintiffs contest the Special Master's dismissal of their claim that North Carolina violated the implied duty of good faith and fair dealing when it withdrew from the Compact in July 1999. Although the Plaintiffs concede that North Carolina technically could withdraw from the Compact, they contend it could not do so in "bad faith." In this regard, the Plaintiffs assert that withdrawal after the acceptance of $80 million from the Commission, and with pending monetary sanctions, was the epitome of bad faith.

In response, the Court noted that it has "never held that an interstate compact approved by Congress includes an implied duty of good faith and fair dealing." While acknowledging that every contract imposes this duty on each party, the Court points out that an interstate compact is not just a contract. It is also a federal statute enacted by Congress. "If courts were authorized to add a fairness requirement to the implementation of federal statutes," reasoned the Court, "judges would be potent lawmakers indeed." Accordingly, the Court held that it cannot add provisions to a federal statute—including an interstate compact.

"We are especially reluctant to read absent terms into an interstate compact given the federalism and separation-of-powers concerns that would arise were we to rewrite an agreement among sovereign States, to which the political branches consented," wrote the Court. "As we have said before, we will not 'order relief inconsistent with the terms' of a compact, 'no matter what the equities of the circumstances might otherwise invite.'"

In its final analysis, the Court determined that the Compact simply does not impose any limitations on North Carolina's exercise of its statutory right to withdraw. Moreover, the Court noted that Article 3—which provides that the Compact shall not be "construed to infringe upon, limit or abridge" the sovereign rights of a party state—ensures that no such restrictions may be implied.

The Court concluded its response to this exception by again referencing a comparison to other contemporaneously enacted low-level radioactive waste compacts. The Court found that at least three such compacts—including the Central Interstate Compact, Central Midwest Compact, and Midwest Compact—contain express good-faith limitations upon a state's exercise of its rights.

Defendant's Exceptions

Exception One:

North Carolina's first exception challenges the Special Master's recommendation to deny without prejudice the State's motion for summary judgment on the merits of certain of the Plaintiffs' equitable claims. As the basis of its motion, North Carolina asserted that, as a matter of law, its obligations are governed entirely by the Compact.

In making his recommendation, the Special Master determined that the referenced claims "require further briefing and argument, and possibly further discovery." For example, the Special Master pointed out that a threshold question for all of the referenced claims is whether they "belong to the Commission, the Plaintiff States, or both."

Noting that the Special Master was afforded discretion, the Court ruled that it was reasonable to defer the ruling and therefore denied North Carolina's first exception.

Exception Two:

In its second and final exception, North Carolina disputes the Special Master's recommendation to deny without prejudice the State's motion to dismiss the Commission's claims on the ground that they are barred by the Eleventh Amendment and by structural principles of sovereign immunity. The Special Master based his decision on prior case law that he interpreted to indicate "that sovereign immunity does not bar the Commission's suit, so long as the Commission asserts the same claims and seeks the same relief as the other plaintiffs." The Special Master determined that further factual and legal developments were required to make such a determination and noted that North Carolina would be free to renew its motion at a later point.

The Court began its analysis by holding that nothing in the subsequent Court decisions referenced by North Carolina suggests that said prior case law has been implicitly overruled. The Court next turned its attention to North Carolina's allegation that said case law cannot apply to the Commission's claims because the Commission cannot assert the same claims or seek the same relief as the plaintiff states. The Court disagreed with North Carolina's contention, however, finding that the Commission and the plaintiff states asserted the same claims and sought the same relief in their bill of complaint.

North Carolina also argued that it was entitled to summary judgment because the Commission, not the plaintiff states, provided the $80 million in financial assistance and therefore only the

Commission can seek its return under Counts I and II of the Bill of Complaint. Since a stand-alone suit by the Commission would be barred by sovereign immunity, North Carolina reasoned that summary judgment was warranted.

The Court disagreed, however, at least with regard to Counts I and II. In this regard, the Court noted that the Compact authorizes the Commission to "act or appear on behalf of any party [S]tate or [S]tates … as an intervenor or party in interest before … any court of law." Since it is in this capacity that the Commission seeks to vindicate the plaintiff states' statutory and contractual rights, the Court found that the Commission's Count I and II claims therefore "rise or fall" with those of the states. "While the Commission may not bring them in a stand-alone action under this Court's original jurisdiction," wrote the Court, "it may assert them in this Court alongside the plaintiff States." The Court then concluded that the sovereign immunity question with regard to any relief that the Commission alone might have on said claims is moot due to the disallowance of the underlying claims on their merits.

The Court found that Counts III—V, which do not rely upon the Compact, "stand on a different footing" as it is conceivable that as a matter of law the Commission's claims may not be identical to those of the plaintiff states. In this regard, the Court notes that the Commission can claim restitution since it provided direct financial assistance, whereas the other plaintiff states cannot do so. "Whether this means that the claims are not identical … and that the Commission's Counts III—V claims must be dismissed on sovereign immunity grounds, is a question that the Special Master declined to resolve until the merits issues were further clarified," wrote the Court. "We have approved his deferral of those issues, and we likewise approve his deferral of the related sovereign immunity issue."

The Special Master deferred a determination as to whether this means that the claims are not identical and that the Commission's Counts III-V claims must therefore be dismissed on sovereign immunity grounds. Upon analysis, the Court concurred with the Special Master's decision.

Opinions by Other Justices

Three separate opinions were filed, in addition to the majority opinion, each of which is briefly summarized below. Persons interested in a more detailed analysis are referred to the opinions themselves.

Justice Kennedy Justice Kennedy filed a separate opinion, with whom Justice Sotomayor joined, concurring in part and concurring in the judgment. The opinion takes issue with the Court's interpretation of the Plaintiffs argument with regard to North Carolina's duty to carry out its obligations in good faith. The majority interpreted the Plaintiffs argument to require the addition of provisions to a federal statute, which Justice Kennedy agreed the Court may not do. Justice Kennedy, however, states that the "plaintiffs' argument is that the Compact's terms, properly construed, speak not only to the specific duties imposed upon the parties but also to the manner in which those duties must be carried out."

Since a compact represents an agreement between parties, Justice Kennedy argues that the Court has a duty when interpreting a compact to ascertain the intent of the parties. "Carrying out this duty may lead the Court to consult sources that might differ from those normally reviewed when an ordinary federal statute is at issue," states Justice Kennedy. As an example, he points to the Court's reference to contract law principles elsewhere in the opinion.

Nonetheless, Justice Kennedy agreed, "that the reasonable expectations of the contracting States, as manifested in the Compact, do not reveal an intent to limit North Carolina's power of withdrawal." In this regard, Justice Kennedy

notes, "that the Compact permits any State to withdraw; imposes no limitation on this right; and explicitly provides that the Compact shall not be construed to abridge the sovereign rights of any party State." Kennedy also states that federalism concerns counsel against finding that a state has implicitly restricted its sovereignty as such.

Justice Roberts Justice Roberts filed a separate opinion, with whom Justice Thomas joined, concurring in part and dissenting in part. The opinion focuses on the admission of the Commission as a party to the action. Justice Thomas points out that the Commission is not a sovereign state and that the Court allowed the Commission to proceed on the basis that it "asserts the same claims and seeks the same relief as the other plaintiffs." Justice Roberts disputes this analysis, however, stating that the "Constitution does not countenance such 'no harm, no foul' jurisdiction, and I respectfully dissent."

Justice Roberts does acknowledge that the Court's opinion leans heavily on prior case law, which he laments "has never been squarely overruled." He argues, however, that said case law is "built on sand." According to Justice Roberts, sovereign immunity applies to the commencement or prosecution of any suit in law or equity. "There is no carve-out for suits 'prosecuted' by private parties so long as those parties 'do not seek to bring new claims or issues,'" argues Justice Roberts.

"The Commission and North Carolina know that more is at stake if the Commission is allowed to sue the State," writes Justice Roberts. "It is precisely the Commission's status as a *party*, its attempt to 'prosecut[e]' a 'suit in law or equity … against one of the United States,' … that sovereign immunity forbids."

Justice Breyer Justice Breyer authored a separate opinion, with whom the Chief Justice joined, concurring in part and dissenting in part. In contrast to the majority opinion, Justice Breyer believes that North Carolina breached the Compact when it suspended its licensing efforts.

In support of his position, Justice Breyer points to Article 5(c) of the Compact regarding the host state's duty to take appropriate steps toward licensing a facility. "Whatever one might think of the sufficiency of North Carolina's activities during the previous decade," writes Justice Breyer, "I do not see how the Court can find that a year and a half of doing nothing—which North Carolina admits it did between December 1997 and July 1999—constitutes 'tak[ing] appropriate steps.'" Although Justice Breyer acknowledges that other compacts delineated a host state's obligation in greater detail than the Southeast Compact, he argues that this "may just as easily be read to indicate what the parties here intended."

Justice Breyer also dismisses the majority's conclusion that it would have been "imprudent" for North Carolina to expend further funds, noting that "courts 'generally' conclude that 'additional expense' 'does not rise to the level of impracticability' so as to excuse a party from performance." In this regard, Justice Breyer contends that the text, structure, and purpose of the Compact indicate that North Carolina alone was responsible for financing the licensing and construction of a new facility. In support of his position, he notes that the Compact expressly states that the Commission "is not responsible for any costs associated with … the creation of any facility."

Contrary to the majority's interpretation, Justice Breyer contends that the Compact's rotational design and structure demonstrate the intent that each state would take a turn bearing financial responsibility for development of a new facility. "This rotational approach is surely a sensible solution to the problems caused by the widespread existence of low-level nuclear waste and the political unpopularity of building the necessary facilities to house it," writes Justice Breyer.

Justice Breyer concludes his opinion by addressing the issue of the $80 million in funding contributed by the Commission and its refusal to contribute additional funds. Contrary to the majority, Justice Breyer does not believe that such action "let North Carolina off the hook." Indeed, he argues, "numerous documents indicate precisely the opposite—that despite the Commission's funding assistance, North Carolina was still responsible for funding the project." As a result, he contends that although North Carolina was within its rights to withdraw from the Compact, the State still nonetheless breached a key contractual provision for which it is liable.

Reaction from the Southeast Compact

"The Commission is disappointed that the Court did not uphold the terms of the Southeast Interstate Low-Level Radioactive Waste Management Compact, a binding contract and a federal law," said Carter Phillips, attorney for the member states and the Southeast Compact Commission. "The Court's decision today weakens the regional Compact system established by the United States Congress."

"This decision will not end our efforts to secure a safe and effective solution to the problem of low-level nuclear waste disposal," added Michael Mobley, Chairman of the Southeast Compact Commission. "There remain several issues that the Court expressly did not decide and the Commission will study how best to proceed with respect to those issues."

The Southeast Compact Commission held its Annual Meeting in Alexandria, Virginia on June 3-4, 2010. (See *LLW Notes,* March/April 2010, p. 12-13.) During the course of the meeting—which was held at the Embassy Suites Hotel in Old Town—the Commission discussed the Court's ruling and considered how best to fulfill its mission.

Background

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

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

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

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

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

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

In April 2009, the Special Master submitted a second report, with exceptions thereto being filed by the parties, for the Court's consideration. (See *LLW Notes,* May/June 2009, pp. 25.) The Special Master found that North Carolina did not breach the Compact and that North Carolina's withdrawal did not violate its implied covenant of good faith and fair dealing.

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

On January 11, 2010, the Court heard oral arguments in the case. Attorneys for the Plaintiffs and Defendants, as well as the U.S. Solicitor General, made presentations to the Court and answered questions from the Justices.

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

For a complete Chronology of Events regarding this litigation please see pages 32-33 in this issue of the newsletter.

(Continued from page 4)

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 and the Central Interstate Low-Level Radioactive Waste Compact Commission have agreed to co-host the spring 2011 meeting of the LLW Forum at a location to be determined.

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 will be held at the Inn and Spa at Loretto on October 17-18, 2011.

2012 Meetings and Beyond

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

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.

Chronology of Events

Staff of the Southeast Compact Commission prepared the following Chronology of Events regarding the Compact's lawsuit against North Carolina.

2000

July: The Commission filed a lawsuit in the U.S. Supreme Court against the State of North Carolina to enforce sanctions against North Carolina for the State's failure to comply with the provisions of the Southeast Compact law and to fulfill its obligations as a party state to the Compact. The Commission asked the Court to exercise its powers of original jurisdiction, which would allow the suit to bypass the lower courts and go directly to the Supreme Court.

September: North Carolina filed a brief in opposition to the Commission's lawsuit, opposing the action by the Commission, arguing, among other things, that the nature of the case did not justify the exercise of original jurisdiction by the Court. The Commission filed its reply brief in response to North Carolina.

October: The U.S. Supreme Court entered an order inviting the U.S. Solicitor General's office to provide a brief expressing the view of the United States regarding the Commission's suit against North Carolina.

2001

May: The acting U.S. Solicitor General filed an *amicus curiae* brief with the U.S. Supreme Court.

June: The U.S. Supreme Court entered an order denying the Commission's motion for leave to file a bill of complaint. The order did not address the merits of the Commission's complaint against North Carolina.

2002

June: The Commission joined four member states – Alabama, Florida, Tennessee, and Virginia – in filing a lawsuit in the U.S. Supreme Court against North Carolina to enforce sanctions against North Carolina. The plaintiff states and the Commission asked the Court to exercise its powers of original jurisdiction, which would allow the suit to bypass the lower courts and go directly to the Supreme Court.

August: North Carolina filed a brief in opposition to the Commission's lawsuit. The State opposed the action by the Commission, arguing, among other things, that the Commission could not invoke the jurisdiction of the Supreme Court by adding four individual states as plaintiffs and that the nature of the case did not justify the exercise of original jurisdiction by the Court.

October: The U.S. Supreme Court entered an order inviting the U.S. Solicitor General's office to provide a brief expressing the view of the United States regarding the most recent suit against North Carolina.

2003

April: The U.S. Solicitor General filed a brief with the Supreme Court supporting the exercise of original jurisdiction and the acceptance of the suit against North Carolina. North Carolina filed a supplemental brief in response to the U.S. Solicitor General's brief.

June: The Supreme Court granted the motion for leave to file a bill of complaint and gave North Carolina thirty days to file an answer. North Carolina asked for and received an extension of time to file.

August: North Carolina filed its answer to the bill of complaint and a motion to dismiss the Commission as a plaintiff in the lawsuit.

September: The plaintiff states and Commission filed an answer to North Carolina's motion to dismiss.

November: The Supreme Court appointed a Special Master with the authority to make recommendations to the Court.

December: The Special Master held his first status conference with the parties to the case.

2004

February: The U.S. Solicitor General filed a brief with the Supreme Court in response to North Carolina's motion to dismiss the Commission as a plaintiff in the lawsuit. The United States argued that the motion should be denied and the Commission should be allowed to proceed as a plaintiff.

March: The Commission and plaintiff states filed a motion for summary judgment in regard to their lawsuit seeking the enforcement of sanctions against North Carolina. North Carolina filed a motion to dismiss the plaintiffs' bill of complaint on the grounds that it failed to state a claim upon which relief can be granted.

May: The parties filed briefs in opposition to the pending motions. The U.S. Solicitor General filed an *amicus curiae* brief related to the motion for summary judgment and motion to dismiss. The brief argued that the plaintiffs should not be entitled to summary judgment to enforce the sanctions order because the Compact does not authorize the Commission to impose monetary sanctions. However the brief also argued that the Plaintiffs can still pursue a judicial remedy against North Carolina for breach of its contractual obligations and that North Carolina's motion to dismiss should also be denied.

June: The parties filed reply briefs in support of the pending motions.

September: The Commission and plaintiff states and North Carolina presented oral arguments before the Special Master in support of the pending motions.

2005

No activity.

2006

June: The Special Master issued a report addressing the pending motions. The report (1) denied North Carolina's motion to dismiss the claims of the Commission, allowing the Commission to remain a party to the suit; (2) denied the Plaintiffs' motion for summary judgment, finding that the Compact does not authorize the Commission to impose monetary sanctions; and (3) denied North Carolina's motion to dismiss the entire complaint, allowing the Plaintiffs to pursue other monetary remedies based on other legal and equitable remedies, such as breach of contract, bad faith, and violation of the compact law. Based on his recommendation the parties proceeded with the development of evidence to be presented to the Special Master.

October: The Special Master issued a scheduling order outlining a period of discovery through 2007 with an opportunity to file dispositive motions by late 2007.

2007

June: The Special Master issued Scheduling Order No. 2 that suspended the discovery process and established a new schedule, which was developed by the parties, for the filing and resolution of dispositive motions.

November: The parties completed the filing of dispositive motions under Scheduling Order No. 2.

2008

January: The Commission and plaintiff states and North Carolina presented oral arguments before the Special Master in support of the pending motions.

February: At the request of the parties, the Special Master issued Scheduling Order No. 3 that deferred resumption of discovery until after a ruling by the Special Master on the pending motions.

March: The Special Master issued Scheduling Order No. 4 that directed the parties to submit limited supplemental briefs in response to legal and factual questions that arose from the January oral arguments.

June: The parties completed the filing of supplemental briefs.

2009

January: The Special Master released a draft report on the remaining issues.

March: The parties submitted their comments on the draft report to the Special Master.

April: The Special Master submitted the final versions of the preliminary report from June 2006 and the second report from 2009. The Court entered an order that noted that the reports of the Special Master had been filed with the Court and provided a briefing schedule for submitting exceptions to the Special Master's reports and other related filings.

September: The parties completed filing of exceptions to the reports of the Special Master.

November: The Supreme Court set January 11, 2010 as the date for oral arguments before the Court.

2010

January: The Court heard oral arguments in the case on January 11, 2010. Attorneys for the Plaintiffs and Defendants, as well as the U.S. Solicitor General, made presentations to the Court and answered questions from the Justices.

Confederated Tribes and Bands of the Yakama Nation v. Washington State Department of Health

Suit Challenges Closure Plan for Hanford LLRW Facility

On May 27, 2010, a lawsuit was filed in the Superior Court of the State of Washington in and for Yakima County that, among other things, challenges a recent decision to allow US Ecology, Inc. to begin closure of the commercial low-level radioactive waste disposal facility at the Hanford Nuclear Reservation.

The Confederated Tribes and Bands of the Yakama Nation (Yakama Nation) and Heart of America Northwest Research Center (HoANW) filed the Petition for Review under the Administrative Procedure Act (APA). Both the Washington State Department of Health (DOH) and the Washington State Department of Ecology (Ecology) are named as Respondents to the action.

Respondents are currently preparing their initial response to the petition, which they expect to file in the coming weeks.

The Parties

Yakama Nation is a federally recognized Indian tribe that ceded land to the government—including lands that contain US Ecology's commercial low-level radioactive waste disposal facility on the Hanford reservation. In so doing, however, the tribe asserts that it reserved the right to hunt, fish and gather foods on the land.

HoANW is a non-profit organization whose mission includes promoting cleanup of wastes at Hanford in order to protect the region's health, economy and environment from contamination.

The Washington State Legislature established DOH in 1989 with a statutory mandate "to provide leadership and coordination in identifying and resolving threats to the public health."

The Legislature established Ecology in 1970 with the purpose of carrying out a state policy "to plan, coordinate, restore, and regulate the utilization of our natural resources in a manner that will protect and conserve our clean air, our pure and abundant waters, and the natural beauty of the state." Ecology is lessee of the land on which the low-level radioactive waste disposal facility is located under a lease from the U.S. Department of Energy. It is also lessor of the land to US Ecology, which is a private corporation that operates the commercial low-level radioactive waste disposal facility at Hanford.

Petitioners' Allegations

The Petitioners complaint focuses on the commercial low-level radioactive waste disposal facility on the Hanford reservation, which is operated by US Ecology and regulated by DOH and Ecology. The Petitioners allege that, since 1965, more than 14 million cubic feet of radioactive wastes have been disposed at the facility in unlined trenches. While recognizing that most of the disposed waste is classified as Class A, B or C low-level radioactive waste, the Petitioners allege that other wastes have been disposed at the facility—including transuranic waste (TRU), Greater-than-Class C waste (GTCC), high-level radioactive waste (HLW), and non-radioactive hazardous wastes including "extremely hazardous wastes" and "extremely hazardous mixed wastes."

The Petitioners allege that state and federal regulations prohibit the disposal of these other than low-level radioactive wastes in a shallow, unlined landfill. They further contend that neither the State of Washington nor the NRC has properly characterized the trenches where such wastes were buried. And, they assert that sampling and testing indicates unacceptably high levels of contamination from said disposal.

In addition, the Petitioners complain that US Ecology failed to disclose the presence of many of the non-radioactive hazardous substances now being found in releases from the facility in its 1985 application to the U.S. Environmental Protection Agency (EPA) for a RCRA Part B permit. They further contend that EPA never approved the application and that US Ecology is unlawfully operating the facility without a Part B permit.

US Ecology submitted a Site Stabilization and Closure Plan for the low-level radioactive waste disposal facility for consideration by DOH and Ecology in 1996. The agencies jointly issued a Draft Environmental Impact Statement (DEIS) in 2000 and a Final Environmental Impact Statement (FEIS) in 2004. The Petitioners acknowledge that the preferred alternative selected in the FEIS was construction of a GeoSynthetic cover, but contend that the agencies committed to perform a risk assessment before deciding whether to proceed. The Petitioners complain that said risk assessment has not been conducted, despite the issuance of an order laying out procedures leading to final remediation action.

Moreover, the Petitioners argue that, prior to the expiration of the applicable public comment period, DOH recently sent a letter to US Ecology authorizing construction of Phase I of the cover. The Petitioners further contend that, on April 28, 2010, DOH and Ecology issued a joint Addendum to the 2004 FEIS that concludes that "there are no changes to the approved closure plan that indicate any new significant adverse environmental impact," despite adverse findings in recent sampling and analysis of the site.

Causes of Action

The Petitioners challenge an April 27 decision by DOH to allow US Ecology to begin closure of the commercial facility at Hanford as a violation of the Atomic Energy Act (AEA), the Low-Level Radioactive Waste Policy Act (LLRWPA), and the Resource Conservation and Recovery Act (RCRA). As such, they claim that the decision is unconstitutional and outside the statutory authority of the agency in violation of the state APA because the Petitioners allege that:

- waste concentrations exceeding Class C have been disposed at the facility;
- DOH has no authority to regulate the disposal of GTCC waste;
- DOH has no authority to approve final disposal of GTCC waste in a manner incompatible with federal regulations promulgated by the NRC;
- NRC has promulgated a regulation specifying that wastes in concentrations exceeding 100 curies per cubic meter are "not acceptable for near surface disposal;"
- DOE and NRC are still in the process of determining disposal strategies for GTCC wastes, including wastes such as those disposed at the facility;
- hazardous wastes subject to federal prohibitions on land disposal were placed in trenches and tanks at the facility; and,
- US Ecology failed to provide a corrective action program for all releases of hazardous wastes or constituents at the facility and all contiguous property under its control.

In addition, the Petitioners contest the April 28 joint decision by state agencies to issue a joint Addendum to the 2004 FEIS as a violation of the State Environmental Policy Act (SEPA) and outside of their statutory authority in violation of the state APA because the Petitioners allege that:

- the agencies failed to issue a Supplemental EIS to consider new information and to consider probable significant cumulative impacts from immediately adjacent and nearby waste sites on the same property and from related pending actions;
- DOH authorized closure prior to conducting a risk assessment and no such assessment was included in the SEPA Addendum;
- the agencies failed to consider the significant probable impacts to health, groundwater and

the environment as found in a separate draft EIS to which Ecology is a formal cooperating agency;
- there was no consideration or identification of mitigation measures that would prevent the identified releases from exceeding relevant standards; and,
- DOH approved construction of the GeoSynthetic cover one day before the SEPA addendum was issued and before the public had an opportunity to comment on the interim plan.

Finally, the Petitioners assert that DOH acted outside its statutory authority in violation of the state APA since there are releases from the low-level radioactive waste landfill that are subject to remedial action pursuant to the Model Toxics Control Act (MTCA). In support of this contention, the Petitioners argue that:

- DOH authorized construction of a cover over the waste trenches while there is an on-going investigation of the facility's waste and releases pursuant to MTCA; and,
- construction of the cover has the potential to interfere and preclude the choices of remedy or additional investigation.

Requested Relief

The Petitioners are asking that the court:

- order, declare and adjudge that DOH acted unlawfully in issuing its approval letter to US Ecology regarding initiation of closure activity at the low-level radioactive waste disposal facility and set aside, declare invalid and/or remand the decision for being in violation of the U.S. Constitution, federal statutes, SEPA and/or the APA;
- order, declare and adjudge that the agencies acted unlawfully in issuing the joint SEPA Addendum and set aside, declare invalid and/or remand the decision for being in violation of SEPA and/or the APA—as well as issue an

(Continued on page 46)

Advisory Committee on Medical Uses of Isotopes

ACMUI Holds May Meeting

On May 24 - 25, 2010, the Advisory Committee on Medical Uses of Isotopes (ACMUI) met at the headquarters of the U.S. Nuclear Regulatory Commission in Rockville, Maryland. ACMUI advises the NRC on policy and technical issues related to the regulation of medical uses of certain radioactive materials.

During the course of the meeting, among other items, the committee discussed the issue of patient release following administration of iodine 131; medical isotope shortage; prostrate brachytherapy medical events that occurred at the Veteran's Affairs Medical Center in Philadelphia, PA; safety culture in medical practices; and grandfathering of certified medical physicists. The committee also discussed subcommittee reports on permanent implant brachytherapy and the byproduct material events for fiscal year 2010.

A meeting summary will be available in early July. The draft transcript became available in late June on the ACMUI web site at http://www.nrc.gov/reading-rm/doc-collections/acmui/tr/ and in the NRC Public Document Room.

Detailed ACMUI agendas can be found at http://www.nrc.gov/reading-rm/doc-collections/acmui/agenda.

Advisory Committee on Reactor Safeguards (ACRS)

ACRS Hosts May and June Meetings

The U.S. Nuclear Regulatory Commission's Advisory Committee on Reactor Safeguards (ACRS) met on May 6-8, 2010 at the agency's headquarters in Rockville, Maryland. The Committee met again at agency headquarters on June 9-11, 2010.

The May meeting agenda included, among other things, revisions to the standard review plan for spent fuel storage systems and discussions on the staff's proposed guidance for the use of containment overpressure credit in boiling-water reactors. In addition, the Committee met with NRC Chairman Gregory Jaczko to discuss topics of mutual interest.

The June meeting agenda included, among other things, assessing consequences of an accidental release of radioactive materials from waste tanks and assessing groundwater flow and transport of accidental radionuclide releases, proposed rulemaking on the distribution of radioactive source materials to exempt persons and to general licensees, status of risk-informing guidance for new reactors and status of generic safety issue for assessment of debris accumulation on pressurized-water reactor sump performance (GSI-191). During the meeting, the Committee discussed the following topics with the Commission: risk-informed performance-based fire protection, NRC's safety research program, draft guidance for use of containment accident pressure, and rulemaking for disposal of depleted uranium.

The ACRS is a group of experienced technical experts that 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.

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/2010/. For additional information on ACRS meetings, please contact Antonio Dias at (301) 415-6805.

U.S. Nuclear Regulatory Commission

NRC Hosts Public Briefing on Blending

On June 17, 2010, the U.S. Nuclear Regulatory Commission held a public briefing on the blending of low-level radioactive waste at the agency's headquarters in Rockville, Maryland. The briefing was open to the public and was available via live web cast.

To view the archived web cast of the meeting, go to www.nrc.gov.

Public Meeting

The meeting began at 9:00 am in the Commissioners' Conference Room on the first floor of One White Flint North. It lasted approximately three hours.

NRC staff began the briefing with a 30-minute presentation on the Commission paper on blending that was issued on April 7, 2010. (See *LLW Notes,* March/April 2010, pp. 1, 25-29.) The paper concludes, "[T]he current blending positions would be improved if they were risk-informed and performance based, and were specified in regulation and further clarified in guidance."

Following a question and answer session by the Commissioners and a short break, there was a

panel of presentations by state representatives from Utah, Texas, Tennessee and Pennsylvania.

Following another question and answer session by the Commissioners, there was a panel of presentations by stakeholders including representatives from Energy*Solutions,* Waste Control Specialists LLC, Studsvik, the Nuclear Information and Resource Service (NIRS), and the Nuclear Energy Institute (NEI).

Another question and answer session by the Commissioners followed before a short five-minute discussion and wrap-up.

Background

By memorandum dated October 8, 2009, NRC Chairman Gregory Jaczko directed staff to develop a paper to identify policy, safety and regulatory issues associated with the blending of low-level radioactive waste, as well as to provide options for an agency position on the issue and to make recommendations for a future blending policy. NRC attributed the review to the closure of Barnwell to out-of-region waste generators, which has caused the industry to examine methods for reducing the generation of Class B and C wastes—including the blending of some types of Class B and C waste with similar Class A waste to produce a Class A mixture that may be disposed of at a currently licensed facility.

The Commission paper was issued on April 7, 2010. (See *LLW Notes,* March/April 2010, pp. 1, 25-29.) In the document, NRC staff examines the blending or mixing of LLRW with higher concentrations of radionuclides with LLRW with lower concentrations of radionuclides to form a final homogeneous mixture. Staff evaluates the agency's previous positions and policies on blending in light of changing circumstances. Staff also examines the assumption that blending is *a priori* undesirable in light of risk-informed, performance-based regulation that focuses on the safety hazard of blending and the blended materials. Finally, staff considers other alternatives for a blending position, including several that would pose additional constraints.

The paper details staff's conclusion that improvements could be made to the current LLRW blending guidance if it were risk-informed and performance-based, consistent with the agency's overall policy for regulation. Staff states that this change could be accomplished in part through revisions to two guidance documents: CA BTP and the Policy Statement. Staff also recommends clarifying that large quantities of blended waste are considered a unique waste stream and are included in NRC's ongoing rulemaking on this topic. These changes would ensure continued safety, according to staff, by requiring that disposal of large-scale blended waste is subjected to a site-specific intruder analysis as part of the overall performance assessment of a disposal facility.

The NRC Commission paper may be found at http://www.nrc.gov/reading-rm/doc-collections/commission/secys/2010/secy2010-0043/2010-0043scy.pdf.

For additional information, please contact James Kennedy of the U.S. Nuclear Regulatory Commission at (301) 415-6668 or at James.Kennedy@nrc.gov.

NRC to Host Public Workshop on DU Screening Model

On June 24, 2010, the U.S. Nuclear Regulatory Commission hosted a public workshop to provide an overview regarding the implementation of the GoldSim software application of the screening model supporting SECY-08-1047, "Response to Commission Order CLI-05-20 Regarding Depleted Uranium."

The public was invited to participate in the meeting by asking questions throughout the meeting.

For the workshop announcement and agenda, please go to http://www.nrc.gov/public-involve/public-meetings/index.cfm.

Agenda

The meeting was scheduled from 9:00 am to 6:00 pm in Room T-8 A1 at the agency's headquarters in Rockville, Maryland.

Following registration, Christepher McKenney provided comments and introduced the participants.

David Esh then discussed the purpose and scope of screening analysis, as well as provided an overview of conceptual model simulation settings.

Following lunch, Christopher Grossman reviewed model implementation for source term scenarios.

After the break, David Esh reviewed model implementation for radon and geosphere transport.

Christepher McKenney concluded the meeting with a summary overview.

Background

In late 2008, the U.S. Nuclear Regulatory Commission made public a paper (SECY-08-0147) providing staff analysis and recommendations regarding the disposal of large quantities of depleted uranium. (See *LLW Notes,* November/December 2008, pp. 1, 27-30.) The paper, which is dated October 7, 2008, responds to Commission direction provided in Order CLI-05-20 (In the Matter of Louisiana Energy Services [LES], October 19, 2005.) In that Order, the Commission directed staff, "outside of the LES adjudication, to consider whether the quantities of depleted uranium (DU) at issue in the waste stream from uranium enrichment facilities warrant amending section 61.55(a)(6) or the section 61.55(a) waste classification tables."

In response to the Commission's order, staff completed a technical analysis of the impacts of near-surface disposal of large quantities of DU, such as those anticipated to be generated at uranium enrichment facilities. The technical analysis evaluated whether amendments should be made to section 61.55(a) in order to assure that large quantities of DU are disposed of in a manner that meets the performance objectives in Subpart C of 10 CFR Part 61. Staff concluded that although near-surface disposal of large quantities of DU may be appropriate in some circumstances, it may not be appropriate under all site conditions. Due to the unique characteristics of DU, staff concluded that existing regulations should be amended in order to ensure the safe disposal of large quantities of this particular waste.

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

The Commission Order, CLI-05-20, can be found at http://www.nrc.gov/reading-rm/doc-collections/commission/orders/2005/2005-20cli.pdf.

The Commission Paper, SECY-08-0147, can be found at http://www.nrc.gov/reading-rm/doc-

collections/commission/secys/2008/secy2008-0147/2008-0147scy.pdf.

Additional background information can be found at http://www.nrc.gov/about-nrc/regulatory/rulemaking/potential-rulemaking/uw-streams.html.

For additional information, please contact Christopher Grossman of the NRC's Office of Federal and State Materials and Environmental Management Programs, Division of Waste Management and Environmental Protection, at (301) 415-7658 or at Christopher.grossman@nrc.gov.

Public Comment Sought re Security of Radioactive Materials

On June 1, 2010, the U.S. Nuclear Regulatory Commission announced that the agency is seeking public comments on proposed new regulations that would codify and expand upon recent security measures for certain sensitive radioactive materials. The proposed rule would add a new Part 37 to NRC's regulations in Title 10 of the U.S. Code of Federal Regulations (10 CFR), and make conforming changes to other parts of NRC regulations regarding radioactive materials. It will establish security requirements for the most risk-significant radioactive materials (those in Category 1 and Category 2 of the International Atomic Energy Agency's rankings of radiation sources), as well as for shipments of small amounts of irradiated reactor fuel.

"Radioactive source security is a high priority for the agency, and this new regulation will mark an important milestone in the progress that the agency has made in this area," stated NRC Chairman Gregory Jaczko. "Through this rulemaking and other interrelated activities, the agency is contributing to an increase in the effectiveness of the nation's security." Chairman Jaczko also pointed to other efforts including implementation of the National Source Tracking System, the ongoing rulemaking for limiting the quantity of byproduct material in a generally licensed device, and the efforts of the Radiation Source Protection and Security Task Force (an interagency group headed by the NRC).

The new Part 37 and changes to other parts of 10 CFR contained in the proposed rule incorporate NRC's lessons learned in implementing security measures following the terrorist attacks of September 11, 2001, as well as stakeholder input on proposed language for the new rule. Codifying these requirements in NRC's regulations will enhance consistency of implementation as well as transparency and predictability of NRC's oversight of radioactive material security.

NRC will separately publish guidance on implementing the new regulations for public comment. The agency also plans to host two public meetings on the implementation guidance. Details of those meetings will be announced at a later date.

Comments on the proposed rule will be accepted for 120 days following publication in the *Federal Register*. Comments may be submitted over the federal government's rulemaking web site at http://www.regulations.gov, using docket ID NRC-2008-0120. Comments may also be e-mailed to Rulemaking.Comments@nrc.gov.

Public Comment Sought re Groundwater Contamination

On May 6, 2010, the U.S. Nuclear Regulatory Commission announced that the agency is seeking additional public input on ways to improve the NRC's approach to the groundwater contamination issue. A task force that the agency formed to address recent tritium contamination of groundwater wells and soil from buried piping leaks at several nuclear power plants will use the input to review the completeness of NRC actions to date and whether those actions need to be augmented.

In April, NRC staff held a public workshop where a variety of government, industry, academic and public experts had the opportunity to provide their input on this matter. The task force will use information gathered at the workshop, as well as from public input, to develop a written report conveying its observations, findings and recommendations. NRC staff will review the report.

A copy of the memorandum establishing the task force can be found at http://www.nrc.gov/reading-rm/doc-collections/fact-sheets/buried-pipes-tritium.html.

NRC Holds Reactor Construction Workshop

On June 17, 2010, the U.S. Nuclear Regulatory Commission held a one-day workshop on vendor oversight for new reactor construction in New Orleans, Louisiana. The workshop, which was open to the public, was intended to bring together regulated utilities, nuclear component vendors and other interested stakeholders. It included presentations from NRC staff, the Nuclear Procurement Issues Committee (NUPIC), the American Society of Mechanical Engineers (ASME), the Nuclear Energy Institute (NEI), the Electric Power Research Institute (EPRI) and two current nuclear vendors.

"We want to share our insights and what we've learned from current construction projects," stated Glenn Tracy, Director of the Division of Construction Inspection in the NRC's Office of New Reactors. "This information is important for current nuclear industry vendors as well as companies interested in supplying components and services to new reactor applicants."

During the workshop, among other items, participants discussed vendor oversight for new reactors; the ASME nuclear survey process; the NRC enforcement policy as it applies to vendors; and counterfeit, fraudulent or suspect items. NRC staff was available at the end of each workshop session for additional discussions.

Information about the workshop can be found at http://www.nrc.gov/reactors/new-reactors/oversight/quality-assurance/vendor-oversight.html.

NRC Updates Guidelines re License Renewal Applications

On May 26-28, 2010, the U.S. Nuclear Regulatory Commission held a public workshop to discuss two preliminary draft documents containing updated guidance for nuclear power plant licensees in submitting applications to the agency for renewal of plant operating licenses. The preliminary draft documents describe methods acceptable to the NRC staff for implementing the license renewal requirements as well as techniques used by the NRC staff in reviewing license renewal applications.

The workshop—which was held at the agency's headquarters in Rockville, Maryland—included presentations and updates from NRC staff, representatives from the Nuclear Energy Institute and other interested stakeholders. Discussions were organized by structural, mechanical and electrical topics.

The following two documents were discussed during the workshop: (1) an update of NUREG-1800, "Standard Review Plan for the Review of License Renewal Applications for Nuclear Power Plants" (SRP-LR), and (2) an update of NUREG-1801, "Generic Aging Lessons Learned (GALL) Report."

The updates are still in progress and are the result of multiple interactions and comments of stakeholders. The updates are intended to incorporate operating experience to date, and update aging management programs from those contained in the 2005 documents. The official revisions of the SRP-LP and GALL documents (Revision 2) are currently scheduled to be published before the end of the year.

Under NRC regulations, a nuclear power plant's original operating license may last up to 40 years. License renewal may then be granted for up to an additional 20 years, if NRC requirements are met. To date, NRC has approved license extension requests for 59 reactor units. In addition, NRC is currently processing license renewal requests for several other reactors.

The preliminary draft documents can be found at http://www.nrc.gov/reading-rm/doc-collections/nuregs/docs4comment.html.

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.

ASLB Hears Argument re Diablo Canyon License Renewal

On May 26, 2010, the Atomic Safety and Licensing Board (ASLB) heard oral argument on the request by the San Luis Obispo Mothers for Peace (SLOMFP) for an evidentiary hearing regarding the license application for a 20-year renewal of the operating licenses for Diablo Canyon Units 1 and 2. The ASLB is an independent, quasi-judicial arm of the NRC that decides legal challenges to applications and proposed licensing actions by the agency.

SLOMFP has submitted contentions challenging five aspects of the license renewal application, along with a request to waive two NRC regulations so as to allow the admission of two of the contentions. The ASLB is considering whether SLOMFP should be granted intervenor status in the proceeding.

The Diablo Canyon plant is located in Avila Beach—12 miles from San Luis Obispo, California. The licensee, Pacific Gas & Electric Company, submitted the renewal application on November 24, 2009 for Units 1 and 2. The current operating licenses expire on November 2, 2024, and August 26, 2025, respectively.

The Diablo Canyon license renewal application is available on the NRC web site at http://www.nrc.gov/reactors/operating/licensing/renewal/applications.diablo-canyon.html.

Combined License Application Reviews Continue

The U.S. Nuclear Regulatory Commission continues to process Combined License (COL) applications that, if issued, provide authorization to construct and, with conditions, operate a nuclear power plant at a specific site and in accordance with laws and regulations.

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

- On May 3, 2010, NRC announced an additional opportunity to participate in the hearing on a COL application for two new reactors at the Vogtle site near Waynesboro, Georgia. Southern Nuclear Operating Company submitted the application and associated information on March 28, 2008. It seeks a license to build and operate two AP1000 reactors at the site, which is located about 26 miles southeast of Augusta, Georgia. Southern supplemented the application on October 2, 2009, requesting a Limited Work Authorization (LWA) for work related to laying concrete and embedded items for the foundation of the proposed plant's nuclear island. Additional information on the LWA request was submitted in February and March of 2010. The additional notice of opportunity to intervene in the hearing—which was published in the *Federal Register* on May 3, 2010 (http://edocket.access.gpo.gov/2010/pdf/2010-10234.pdf) —is limited to the LWA request.

- On April 19, 2010, NRC announced that the agency is seeking public comments on its preliminary conclusion that there are no environmental impacts that would preclude issuing a COL for a new reactor at the Calvert Cliffs site near Lusby, Maryland. UniStar applied for a license to build and operate an Areva EPR at the site, which is located approximately 40 miles south of Annapolis. UniStar submitted the application's environmental portion and associated information on July 13, 2007. It supplemented the report on December 14, 2007. UniStar's environmental report also includes siting and administrative information required by NRC regulations. NRC will consider written comments on the draft Environmental Impact Statement, submitted no later than 75 days after the U.S. Environmental Protection Agency publishes its *Federal Register* notice regarding the document.

- On April 19, 2010, NRC announced that that the agency is seeking public comments on its preliminary conclusion that there are no environmental impacts that would preclude issuing a COL for two new reactors at the Virgil C. Summer site near Jenkinsville, South Carolina. Southern Calfornia Electric & Gas (SCE&G) and Santee Cooper applied for a license to build and operate two Westinghouse AP1000 reactors adjacent to the existing Summer nuclear power plant, which is located approximately 26 miles northwest of Columbia, South Carolina. The companies submitted their application on March 28, 2008, and supplemented their request on February 13, 2009 and January 28, 2010. The NRC met with the public near the Summer site in January and March 2009 to gather input for the environmental review. NRC will consider written comments on the draft Environmental Impact Statement, submitted no later than 75 days after the U.S. Environmental Protection Agency publishes its *Federal Register* notice regarding the document.

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

ESP Applications Continue to Move Forward

The U.S. Nuclear Regulatory Commission continues to process applications for Early Site Permits (ESP) from various entities. In that regard, the agency recently made available to the public ESP applications for sites near Salem, New Jersey and Victoria, Texas.

An NRC decision to issue an ESP means that the site is suitable for a nuclear power facility, contingent on the approval of an additional

application for a construction permit or combined license. An ESP is valid for 10 to 20 years and can potentially be renewed for an additional 10 to 20 years.

Exelon submitted its application and associated information for a site approximately 13 miles south of Victoria on March 25, 2010. PSEG Power and PSEG Nuclear submitted the application and associated information for their site, which is located approximately seven miles southwest of Salem, on May 25, 2010.

NRC staff is currently conducting initial checks to determine whether the applications contain sufficient information required for formal reviews. If the applications pass the initial checks, the NRC will "docket" them for review. If accepted, NRC will then announce opportunities for the public to request adjudicatory hearings on the applications.

The Victoria application, minus proprietary and security-related details, is available at http://www.nrc.gov/reactors/new-reactors/esp/victoria.html. The Salem application, minus proprietary and security-related details, is available at http://www.nrc.gov/reactors/new-reactors/esp/pseg.html.

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

NRC Swears In Newest Commissioner

On April 23, 2010, the oath of office was administered to the U.S. Nuclear Regulatory Commission's newest Commissioner, Dr. George Apostolakis. NRC Chairman Gregory Jaczko performed the ceremony at the agency's headquarters in Rockville, Maryland. The addition of Apostolakis, a professor of nuclear science, brings the agency to its full complement of five Commissioners for the first time since 2007. He joins the other Commissioners Kristine Svinicki, William Magwood and William Ostendorff. Both Magwood and Ostendorff were sworn in on April 1, 2010.

"I'm looking forward to the Commissioner joining our discussions about important policy issues facing the agency and the nation," said Chairman Jaczko. "He brings an exceptional background and talent to the NRC. His insights and experience will strengthen our decision-making and help us to continue to meet our critical mission to protect public health, safety and the environment."

Before joining the NRC, Apostolakis was the Korea Electric Power Corporation professor of Nuclear Science and Engineering and a professor of Engineering Systems at the Massachusetts Institute of Technology. He is the founder of the International Conferences on Probabilistic Safety Assessment and Management and received the Tommy Thompson Award for his contributions to improvement of reactor safety in 1999 and the Arthur Holly Compton Award in Education in 2005 from the American Nuclear Society. He was elected to the National Academy of Engineering in 2007.

The NRC Commissioners have five-year terms, each staggered one year apart. Apostolakis was confirmed to a term that ends on June 30, 2014.

Apostolakis biography is available at http://www.nrc.gov/about-nrc/organization/commission/apostolakis.html.

NRC Appoints Director of NMSS

On May 6, 2010, the U.S. Nuclear Regulatory Commission announced the appointment of Catherine Haney as Director of the Office of Nuclear Material Safety and Safeguards (NMSS).

The office oversees the regulation of fuel cycle facilities (uranium conversion/deconversion, enrichment, fuel fabrication and recycling), as well as spent fuel storage and transportation and high-level radioactive waste disposal. Haney becomes the first woman to head one of the agency's large technical offices.

Haney first joined the NRC staff in 1981 as a health physicist intern in the former Office of Inspection and Enforcement. After a break in federal service, she rejoined the agency in 1989 and served in a number of positions in NMSS. She joined the Senior Executive Service in 2001 and served in a number of senior management positions in the offices of Nuclear Security and Incident Response, Nuclear Reactor Regulation, and NMSS. She has served as Deputy Director of NMSS since 2008.

Haney earned a Bachelor of Science degree in Radiological Technology from the University of Maryland and a Master of Science degree in Radiological Science from Emory University.

NRC Meets re Spent Fuel Storage & Transportation Licensing Process

On June 23-24, 2010, the U.S. Nuclear Regulatory Commission held a public conference on the licensing process for spent nuclear fuel storage and transportation. The conference was held at the agency's headquarters in Rockville, Maryland. The Division of Spent Fuel Storage and Transportation (SFST), which is part of NRC's Office of Nuclear Material Safety and Safeguards (NMSS), sponsored the conference.

"This conference is part of the agency's continuous effort to improve the process for licensing and certifying spent fuel storage facilities and the safe transportation of radioactive material," said NMSS Director Catherine Haney. Among other topics, the conference included updates on regulations, standard review plans and interim staff guidance, as well as an open discussion on how to improve the effectiveness and efficiency of the licensing process.

For additional information, including a public meeting notice, please go to http://www.nrc.gov/public-involve/conference-symposia/2010-lic-process-conf.html.

Nuclear Sector Specific Agency, Department of Homeland Security

Disused Source Focus Group Drafts Part 2 Deliverable

In February 2009, the Nuclear Government Coordinating Council (NGCC) and Nuclear Sector Coordinating Council (NSCC) created the Removal and Disposition of Disused Sources Focus Group. The Focus Group is comprised of a collaboration of individuals from both the public and private sector that are working to fully characterize the sealed source disposal challenge, develop a consensus problem statement, investigate and recommend immediate and long-term options, and recommend to the NSCC and NGCC a messaging strategy for communicating with the appropriate stakeholders to implement a solution.

Focus Group leaders Abigail Cuthbertson and David Martin have attended and made presentations at past LLW Forum meetings—including a presentation at the spring meeting in Austin, Texas on the Part 1 Deliverable that was submitted by the group in December 2009. The Part 1 Deliverable, among other things, described 16 potential solutions to the sealed source disposal problem. The solution set included both permanent disposition options and temporary options such as secure storage and recycle. The

intention in compiling the list was to ensure that a wide range of potential solutions would be considered in making specific recommendations in Part 2 of the Deliverable.

In mid-May 2010, the Focus Group put out the draft Part 2 Deliverable for review and comment. The draft Part 2 Deliverable includes a messaging strategy and provides specific recommendations on potential solutions to the sealed source disposal problem. The identified potential solutions include:

- co-disposal of foreign-origin Am-241sources with domestic sources;
- physical destruction and down-blending for disposal as Class A LLRW;
- concentration averaging of sealed sources for disposal as Class A LLRW;
- case-by-case exemption by existing compacts for disposal of discrete numbers of high-risk sealed sources; and,
- support range of DOE GTCC disposal alternatives addressed in GTCC Environmental Impact Statement.

The Part 2 Deliverable excludes all non-permanent solutions, such as storage and recycle. Although the Focus Group recognizes that these temporary solutions are critical to sealed source management, they determined that they do not provide the ultimate objective of permanent disposition.

The Part 2 Deliverable also includes a historical review of the Low-Level Radioactive Waste Policy Act of 1980 and its 1985 amendments, as well as a brief explanation of the U.S. Supreme Court's landmark decision in *New York v. United States* and a characterization of siting attempts by low-level radioactive waste compacts.

Comments on the draft Part 2 Deliverable were due on June 1. The Focus Group will now review, compile and, where appropriate, incorporate the comments into the document prior to finalizing and submitting it.

For additional information, please contact David Martin of the NNSA's Office of Infrastructure Protection, Department of Homeland Security, at david.w.martin@associates.dhs.gov or at (703) 603-5176.

(Continued from page 36)

order requiring the agencies to issue an SEIS prior to taking any action;
- stay or enjoin the agencies' actions pending judicial review;
- award Petitioners' their litigation expenses—including reasonable attorney fees; and,
- award further or additional relief which the court finds just and equitable.

For additional information from the Washington State Department of Ecology, please contact Larry Goldstein at (360) 407-6573 or at lgo461@ecy.wa.gov. For additional information from the Washington State Department of Health, please contact Gary Robertson at (360) 236-3210 or at Gary.Robertson@doh.wa.gov or Mike Elson at (360) 236-3241 or at Mike.Elson@doh.wa.gov.

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- 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). .....**listserver@unixmail.rtpnc.epa.gov**

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- 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**

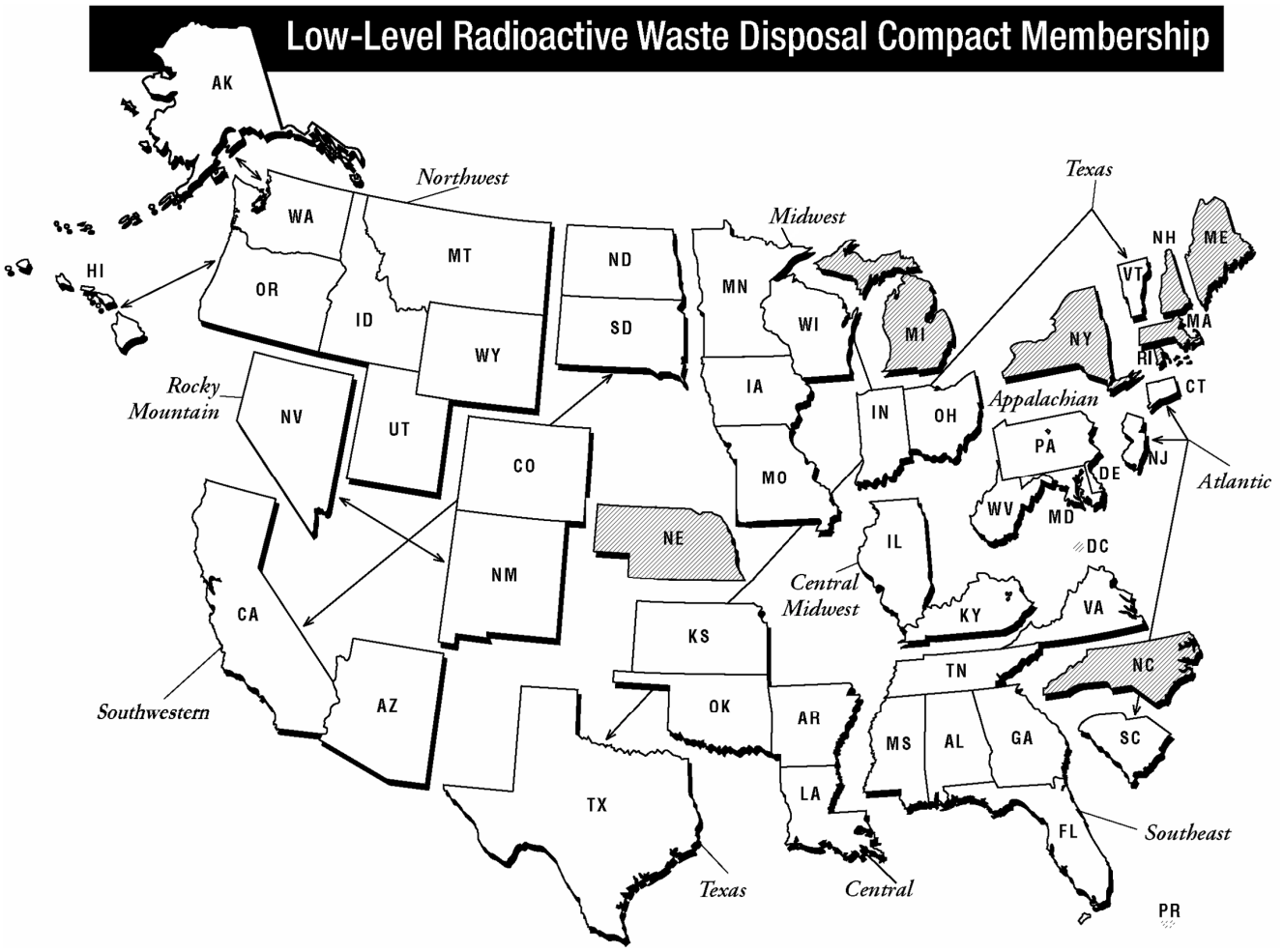
- GAO homepage (access to reports and testimony) .....**www.gao.gov**

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.



Appalachian Compact
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South Carolina

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Kentucky

Northwest Compact
Alaska
Hawaii
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Montana
Oregon
Utah
Washington
Wyoming

Midwest Compact
Indiana
Iowa
Minnesota
Missouri
Ohio
Wisconsin

Rocky Mountain Compact
Colorado
Nevada
New Mexico

Northwest accepts Rocky Mountain waste as agreed between compacts

Southeast Compact
Alabama
Florida
Georgia
Mississippi
Tennessee
Virginia

Southwestern Compact
Arizona
California
North Dakota
South Dakota

Texas Compact
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