

LLW *notes*

Volume 26, Number 1 January/February 2011

Texas Compact/State of Texas

Texas Compact Commission Approves Import and Export Rules

At a meeting held on January 4, 2011, the Texas Low-Level Radioactive Waste Disposal Compact Commission (the "Commission") approved revised Preliminary Rules on the Exportation and Importation of Waste by a vote of five to two. Various amendments to the rules were accepted prior to passage, including those offered by the Vermont Commissioners that clarified issues regarding the reserving of disposal capacity at the regional commercial facility for generators from the State of Vermont.

The vote followed a series of legal maneuvers by Public Citizen and the Texas Civil Rights Project that attempted to block the Commission from proceeding to act on the proposed rules. (See related story, this issue.) The groups initially succeeded at getting a state district court judge to enjoin the Commission from adopting, approving, or otherwise implementing the proposed rules. However, late on January 3, 2011, a federal district judge dismissed the case and dissolved the temporary restraining order ("TRO") after determining that neither the state nor federal court had jurisdiction to prevent the Commission from acting on the proposed rules.

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.

Background on Proposed Import/Export Rules

The 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

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

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Low-Level Radioactive Waste Forum, Inc.

LLW Notes

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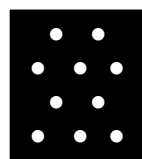
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Key to Abbreviations

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

Low-Level Radioactive Waste Forum, Inc.

Spring 2011 LLW Forum Meeting Registration Continues *Orange Beach, Alabama on March 24-25, 2011*

The Low-Level Radioactive Waste Forum will host its spring 2011 meeting at the Perdido Beach Resort in Orange Beach, Alabama. The Central Interstate Low-Level Radioactive Waste Compact Commission and the Southeast Compact Commission for Low-Level Radioactive Waste Management are co-sponsoring the meeting—which will be held on Thursday, March 24, and Friday, March 25. The Executive Committee will meet on Thursday morning.

A meeting bulletin, registration form and agenda can be found on the LLW Forum's web site at www.llwforum.org.

Agenda

There are many exciting and interesting topics scheduled for the conference including sessions concerning:

- ◆ licensing and activities update for the Waste Control Specialists' planned low-level radioactive waste disposal facility in Andrews County, Texas;
- ◆ panel discussion regarding the recent appellate court decision concerning authority over the Clive low-level radioactive waste disposal facility in Tooele County, Utah;
- ◆ revising Branch Technical Position on concentration averaging and encapsulation;
- ◆ NRC's proposed approach to risk-informed, performance-based revision to 10 CFR Part 61;
- ◆ DOE's recently-released Greater-Than-Class C draft environmental impact statement;

- ◆ panel discussion of challenges facing the medical, academic and other non-utility generators;
- ◆ new, emerging and innovative technologies being used by brokers and processors;
- ◆ engineered barrier performance regarding low-level radioactive waste, decommissioning, and uranium mill tailings facilities; and,
- ◆ update on URENCO-USA's recent facility start-up and development of waste handling programs.

For additional program information, please refer to the draft Meeting Agenda on the LLW Forum's web site at www.llwforum.org.

Attendance

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

Registration

All persons must pre-register for the meeting and pay any associated registration fees in order to be allowed entry. Registration forms are needed in

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

order to ensure that you receive a meeting packet and name badge.

Accordingly, interested attendees are asked to please take a moment to complete the registration form at your earliest convenience and return it to Linda Walters of the Southeast Compact Commission at the address, e-mail or fax number listed at the bottom of the form.

Hotel Reservations

Persons who plan to attend the meeting are encouraged to make their hotel reservations and send in their registration forms as soon as possible, as we have exceeded our block at the last few meetings.

A block of 60 rooms has been reserved for Wednesday (March 23) and Thursday (March 24) for meeting attendees at the special, discounted rate of \$119 (single and double occupancy rate) plus tax. A \$10 surcharge may be applied for each additional person occupying a room. The rate is available for three days prior to and after the meeting.

To make a reservation, please call the Perdido Beach Resort directly at (800) 634-8001 and ask for a room in the LLW Forum Meeting Block, Booking ID #7602. You may also make reservations online at www.perdidobeachresort.com by entering Booking ID #7602 on the booking screen.

Transportation

The Perdido Beach resort is located approximately 30 miles from the Pensacola Regional Airport in Pensacola, Florida, and 71 miles from the Mobile Regional Airport in Mobile, Alabama. Shuttle service is available from either airport through Mobile Bay Transportation at <http://www.mobilebaytransportation.com>.

To access the meeting bulletin, registration form, and agenda, 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 2011 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.

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. The meeting will be held at the Perdido Beach Resort in Alabama from March 24-25, 2011. Meeting registration is now open. (See related story, this issue.) Interested attendees are encouraged to send in registration forms and make hotel reservations early, as the LLW Forum has exceeded its block at the last several meetings.

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

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

The Central Midwest Interstate Low-Level Radioactive Waste Commission agreed to host the LLW Forum's fall 2012 meeting. This will be the third time that the Commission has hosted a meeting of the LLW Forum since we began operations as an independent, non-profit organization in 2000. As of press time, a date and location for the meeting have not been established.

Search for Volunteer Hosts for 2013 Meetings

The LLW Forum is currently seeking volunteers to host both the spring and fall 2013 meetings and those thereafter. Although it may seem far off, substantial lead-time is needed to locate appropriate facilities.

If your state or compact has not hosted a meeting in the past two years, we ask that you consider doing so. If necessary, we may be able to assist you in finding a co-host.

Non-state and non-compact entities are eligible to co-host LLW Forum meetings, so please let us know if your company or organization is interested in doing so.

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.

LLW Forum Organizes Panel Presentation for WM'11 Symposia

Once again, the Low-Level Radioactive Waste Forum is organizing a panel presentation for the upcoming Waste Management 2011 Symposia to be held in Phoenix, Arizona from February 27 through March 3, 2011. The LLW Forum's panel is titled, "Hot Topics and Emerging Issues in US Commercial Low-Level Radioactive Waste Management." It is Session 15 on Monday, February 28, from 1:30 pm to 3:10 pm.

The Southeast Compact Commission for Low-Level Radioactive Waste Management is organizing a panel for the session immediately following the LLW Forum's panel presentation. The panel is titled, "Selected Key Topics in US Commercial Low-Level Radioactive Waste Management." It is listed as Session 16 and will be held on the same day from 3:15 pm to 5:00 pm in the same room as the LLW Forum's panel.

Interested parties are invited and encouraged to attend both sessions.

LLW Forum Panel 15

This panel will focus on emerging issues in commercial low-level radioactive waste management in the United States from the perspective of five active members of the LLW Forum. State, compact, federal and industry officials will share their views on a variety of timely and significant topics related to low-level

radioactive waste management, disposal and related issues. Topics to be discussed will include:

- ◆ overview and analysis of a recent decision by the US Court of Appeals for the Tenth Circuit in *EnergySolutions v. Northwest Compact et. al.* affirming the compact's authority over the Clive commercial LLW facility in Utah;
- ◆ status update from the Texas Low-Level Radioactive Waste Disposal Compact Commission including consideration of a draft import/export rule, licensing and construction activities overview, and review of Waste Control Specialists' pending rate setting application;
- ◆ EPA report regarding coordination and execution of clean-up from a hypothetical incident involving a radiological dispersal device, including overview of the Liberty RadEx exercises;
- ◆ NRC agency activities and hot topics including revising the BTP on concentration averaging and encapsulation, unique waste streams (depleted uranium and blended waste) guidance development and rulemaking, and consideration of risk-informed/performance-based revision to 10 CFR Part 61; and,
- ◆ regulatory activities in the State of Utah including the draft prospective performance assessment rule, byproduct material rulemaking, draft administrative proceedings rule, blending and classification position statements, and depleted uranium performance assessment rule.

Panelists include: Leonard Slosky, Rocky Mountain Board; Michael Ford, Texas Compact; Dan Schultheisz, US EPA; Larry Camper, US NRC; and Rusty Lundberg, Utah Radiation Control Board.

Southeast Compact Panel 16

This panel will focus on selected key topics in commercial low-level radioactive waste management in the United States. Topics to be discussed will include:

- ◆ the Richard S. Hodes M.D. Honor Lecture Award will be presented to Christine Gelles of the U.S. Department of Energy by Michael Mobley of the Southeast Compact Commission;
- ◆ the Waste Management 2011 Richard S. Hodes M.D. Honor Lecture;
- ◆ the first new conventional uranium mill in the United States in 30 years—status of the Pinon Ridge Project in Colorado; and,
- ◆ waste management options—impact of Waste Control Specialists, Inc.

Panelists include: Michael Mobley, Southeast Compact Commission; Christine Gelles, U.S. Department of Energy; Steven Brown, SHB Inc.; and Daniel Burns, Waste Control Specialists Inc.

For additional information about and registration details for the Waste Management 2011 Symposia, please go to www.sym.org.

Central Midwest Compact/State of Illinois

Public Meetings Held re Zion Decommissioning

On February 22, 2011, two public meetings were held at the Illinois Beach Resort and Conference Center to discuss the U.S. Nuclear Regulatory Commission's actions to ensure the safe decommissioning of the Zion Nuclear Power Station. The two-unit plant is located roughly 40 miles north of Chicago in Zion, Illinois. It ceased operation in 1997.

ZionSolutions, a subsidiary of *EnergySolutions*, will carry out decommissioning activities at the plant. *ZionSolutions* was created to manage the decommissioning work at Zion.

The February 22 meetings were tailored to provide members of the public with an opportunity to have dialogue with NRC representatives. NRC staff was available for questions and discussion after the meetings.

During the meetings, NRC staff talked to the public about agency inspections, independent surveys and other activities to ensure the safety of the local community, workers at the site and the environment. NRC addressed issues of concern to the public, such as how people can have confidence that spent nuclear fuel at Zion will be stored safely. At the end of the process, NRC will make sure the area is decontaminated to a level that permits release of the property and termination of the NRC license.

Zion Unit 1 operated from 1973 to 1997; Unit 2 operated from 1974 to 1996. After a nuclear plant is permanently shut down, decommissioning has to take place within 60 years of the shut down date.

In 2008, plant owner Exelon Corporation submitted a request to the NRC to transfer licensed ownership to *ZionSolutions*. NRC reviewed the license transfer request, making sure that the company had proper staffing and expertise to safely implement decommissioning activities and that there would be sufficient funds to fully decommission the plant. NRC approved the license transfer in September 2010.

For additional information, please contact Marcia Marr of the Illinois Emergency Management Agency at (217) 785-9982 or at Marcia.Marr@illinois.gov.

Northwest Compact/State of Idaho

Evidentiary Hearings Held re Areva Uranium Enrichment Application

On January 25, 2011, the U.S. Nuclear Regulatory Commission's Atomic Safety and Licensing Board (ASLB) held evidentiary hearings on safety-related aspects of an application by Areva Enrichment Services LLC for a license to construct and operate a gas centrifuge uranium enrichment facility in Bonneville, Idaho. The ASLB will consider whether the Areva application contains sufficient information and the NRC staff's review is adequate to support issuance of a license.

The hearings—which were held at the NRC headquarters in Rockville, Maryland and webcast over the Internet—are part of the “mandatory hearing” process on the Areva application. Areva and NRC staff acted as parties during the hearing, which addressed safety-related aspects of Areva's safety analysis report in its application and the safety evaluation report (SER) prepared by the NRC staff. Presentations focused on site-specific

process-related hazards, foreign ownership and control, license conditions and exemptions, and commitment follow-up and tracking.

In addition to conducting the hearings, the ASLB is accepting “limited appearance” written statements from members of the public on matters involving the hearing. The ASLB is particularly interested in comments involving the NRC staff’s SER on the application. Limited appearance written statements should be submitted both to the NRC Office of the Secretary and to the ASLB via e-mail to hearingdocket@nrc.gov and paul.bollwerk@nrc.gov.

The NRC staff’s SER on the Areva application is available on the agency’s website at <http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1951/>.

Northwest Compact/State of Utah

Utah Hosts Public Session re DU Performance Assessment

On February 1, 2011, from 9:00 am to 4:00 pm, the Utah Department of Environmental Quality (DEQ) hosted its third education/discussion session on issues related to the upcoming submittal of the Depleted Uranium Performance Assessment for the EnergySolutions’ low-level radioactive waste disposal facility in Clive, Utah.

The DEQ-Sponsored Education/Discussion Session

Who Was Invited Anyone with an interest in the topic was invited and encouraged to attend. Specifically, DEQ’s announcement stated that it was seeking thoughtful suggestions, comments

and input that may help the agency to improve the process.

Format The format was the same as that used in previous sessions—technical presentations plus an opportunity for group discussion. The session was facilitated but, due to the expense, was not web cast.

Location The session was held at the DEQ Multi Agency State Office Building at 195 North 1950 West in Salt Lake City, Utah. It was held in Conference Room 1015.

Agenda The draft agenda contained the following items:

- ◆ Discussion: Follow-up from Sessions 1&2
- ◆ Neptune Presentation
- ◆ Non-State Policy Matters
- ◆ The Path Forward

Utah’s DU 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, 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

States and Compacts *continued*

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 became 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 EnergySolutions' 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 public 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/publicparticipation.pdf>.

For additional information, please contact Rusty Lundberg, Director of the Utah Division of Radiation Control, at (801) 536-4257 or at rlundberg@utah.gov.

Utah Radiation Control Board Meets in February

The Utah Radiation Control Board held a regularly scheduled meeting on Tuesday, February 8, 2011. The meeting—which was open to the public—was held in Conference Room 1015 of the Multi Agency State Office Building at 195 North 1950 West in Salt Lake City, Utah.

The Radiation Control Board—which is appointed by the Utah Governor with the consent of the Utah Senate—guides development of Radiation Control policy and rules in the state.

Agenda Items

The following items, among others, were on the February meeting agenda:

- ◆ approval of minutes of past meeting;
- ◆ potential adoption of proposed rule changes to R313-25-8, technical analysis, to incorporate requirements regarding site-specific performance assessments associated with the disposal of low-level radioactive waste;
- ◆ radioactive waste disposal—waste classification actions by generators and *EnergySolutions*;
- ◆ uranium mill licensing and inspection—tolling agreement for Denison Mines;
- ◆ other division activities reports—including a follow-up report on the 3rd session of the recent Performance Assessment Education and Discussion Workshop; and,
- ◆ public comment period.

Proposed Rule Changes re Site-Specific Performance Assessments

Under the proposed rule changes, a licensee or applicant shall conduct a site-specific performance assessment and must receive approval from the Executive Secretary prior to the acceptance of any radioactive waste if:

States and Compacts *continued*

- ◆ the waste is likely to result in greater than 10 percent of the dose limits in R313-25-19 during the time period at which peak dose would occur;
- ◆ the waste will result in greater than 10 percent of the total site source term over the operational life of the facility; or,
- ◆ the disposal of the waste would result in an unanalyzed condition not considered in the development of 10 CFR 61.55.

The proposed rule changes state that a licensee that has a previously-approved site-specific performance assessment that addressed a radioactive waste for which a site-specific performance assessment would otherwise be required under R313-28-8(1) must notify the Executive Secretary of the applicability of the previously-approved site-specific performance assessment at least 60 days prior to the anticipated acceptance of radioactive waste.

As proposed, a licensee may not accept radioactive waste until the Executive Secretary has approved the above-identified information.

The licensee or applicant is responsible for including in the specific technical information analyses as specifically identified in the proposed rule changes to demonstrate that the performance objectives will be met. The effects of changing lake levels have been added to the list of factors to be included in the analyses.

For additional information, see LLW Notes, November/December 2010, pp. 7-8.

Performance Assessments Education and Discussion Workshops

On November 9-10, 2010, the Division of Radiation Control of the Department of Environmental Quality in the State of Utah hosted a second performance assessments education and discussion workshop. The two-day meeting, which was intended to involve interested stakeholders and the public in matters related to

the disposal of low-level radioactive waste in the state, provided participants with an opportunity to learn and understand the essential components and parameters of a performance assessment with respect to low-level radioactive waste disposal. Both days of the workshop were conducted under the direction of a facilitator. The first day was conducted as an educational session by providing an overview of performance assessments. The second day built on the overview by allowing participants to offer input and feedback regarding the specific components of a performance assessment and related issues and key considerations.

A third performance assessments education and discussion workshop was held on February 1. The workshop focused on issues related to the upcoming submittal of the Depleted Uranium Performance Assessment for EnergySolutions. The workshop, which was again conducted under the direction of a facilitator, followed up on various “parking lot” items from the earlier workshops including issues related to long-term modeling, performance objectives, public protection, and quality assurance and transparency.

For additional information, see LLW Notes, November/December 2010, pp. 8-9.

Future Board Meetings

The Board holds open meetings ten times per year at locations throughout the state. The next meeting is scheduled for March 8, 2011. A public comment session is held at the end of each meeting.

Copies of the Utah Radiation Control Board meeting agendas can be found at <http://www.radiationcontrol.utah.gov/Board/minagd/agenda.pdf>

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

Comment Period Opens for Utah's Revised Generator Site Access Permit Enforcement Policy

On February 2, 2011, the Division of Radiation Control (DRC) of the State of Utah announced that it is revising the Generator Site Access (GSA) Permit Enforcement Policy and the Appendix A, Point Value Assessment Table, due to amendments to the U.S. Department of Transportation Hazardous Materials Regulations (HMR). The recommended changes to the GSA policy will incorporate new HMR and/or modified state and federal regulations.

The purpose of the DRC GSA enforcement policy is "to support the DRC's overall safety mission in protecting the public and the environment from undue hazards and their associated risks through the uniform application of enforcement action as specified." The procedures set forth in R313-26 (GSA for Accessing Utah Radioactive Waste Disposal Facilities) enables the DRC to exercise its enforcement authority. Procedures found in R313-14-15 (Enforcement Actions) prescribe civil penalties.

In particular, the draft DRC Policy states as follows:

Permittees are required to offer shipments that are compliant with the EnergySolutions Radioactive Materials License.

Shipments containing DOT non-regulated material shall be packaged adequately to assure package integrity and containment of waste material shipped.

The DRC will generally base Notice of Violation and Imposition Orders on evaluation of points

assessed against a generator during any single shipment event or over the course of generator shipping campaigns. Under the new policy, points are assessed from the date that a Notice of Violation is issued and carry over for 12 consecutive months. The draft policy provides adjustments to the penalty guidelines—i.e., frequently cited violations that are used as examples in determining the appropriate point value assessment for a given violation.

The DRC is beginning a 30-day comment period that will end on Friday, March 4, 2011. Interested parties are invited to review and submit comments on proposed requirements that differ from the previous HMR requirements.

A copy of the Draft GSA Permit Enforcement Policy can be found at <http://www.radiationcontrol.utah.gov/GSA/docs/2011draftenforcepolicy.pdf>.

For additional information, please contact Julie Fausto at (801) 536-0073.

Comment Period Opens re EnergySolutions' Baghouse Proposal

On January 18, 2011, the Utah Department of Environmental Quality's Division of Air Quality (DEQ/DAQ) announced the opening of a 30-day public comment period on a proposal by EnergySolutions to install a baghouse to the product off-loading section of the batch plant. The comment period runs from January 13 through February 12, 2011.

The draft permit includes provisions covering two existing silos, three emergency generators, an increase in the haul road length and clarification of existing permit language. According to

DEQ/DAQ, EnergySolutions will continue to be a minor source for all pollutants.

DEQ/DAQ notified EnergySolutions' of its intent to approve the proposal by letter dated January 11, 2011. According to the letter, the Intent to Approve is subject to public review and any comments received thereon will be considered prior to issuance of an Approval Order.

EnergySolutions is a Utah-based company that operates a commercial treatment, storage and disposal facility in Tooele County approximately 80 miles west of Salt Lake City. The facility is licensed to handle several classifications of radioactive material and waste including Naturally Occurring and Accelerator Produced Material (NORM), Class A low-level radioactive material (LARW), uranium and thorium by-product material, and radioactive waste that is also determined to be hazardous (mixed waste). EnergySolutions' Utah facility is approximately one square mile in size and is located in a remote desert area, approximately 20 miles from the nearest residence. The depth to groundwater averages approximately 30 feet.

The Utah Division of Radiation Control (DRC) and the U.S. Nuclear Regulatory Commission regulate EnergySolutions' licenses for NORM, LARW, and uranium and thorium by-product material. The facility's mixed waste operations are regulated by both the DRC and the Utah Division of Solid and Hazardous Waste (DSHW)—with DRC regulating the radioactive portion of the waste and DSHW regulating the hazardous waste portion.

For additional information, please go to the "Current Activities" section of the EnergySolutions issues page on the DEQ web site at <http://www.deq.utah.gov/Issues/energysolutions/index.html>. You may also contact Camron Harry of DEQ/DAQ at caharry@utah.gov.

Northwest Compact/State of Wyoming

No Major Impacts Preclude Proposed Wyoming Uranium Recovery Site

On January 24, 2011, the U.S. Nuclear Regulatory Commission announced its determination that there are no major environmental impacts that would preclude licensing the Nichols Ranch uranium recovery project proposed for Johnson and Campbell counties in Wyoming.

Uranerz Energy Corporation submitted a license application for the Nichols Ranch on November 30, 2007. The proposed project would be located in the Pumpkin Buttes Uranium Mining District of the Powder River Basin—approximately 46 miles south-southwest of Gillette and 60 miles north-northeast of Casper. The project would cover nearly 3,400 acres, of which about 300 acres would be directly affected by operations. The facility would recover and mill uranium for use in fuel for commercial nuclear power plants.

In its final Supplemental Environmental Impact Statement (SEIS) for the Nichols Ranch project, NRC determined only small to moderate environmental impacts would result from the construction, operation, aquifer restoration and decommissioning of the proposed in-situ recovery facility. Most of the impacts are projected to be "small," meaning that they would be undetectable or so minor that they would not noticeably alter any important attribute of the resource in question. The SEIS also identifies "small to moderate" socioeconomic impacts, primarily due to the potential need for additional housing for employees at the facility and economic activity generated by the facility. "Moderate" impacts are defined as being sufficient to alter the resource noticeably, but not destabilize its important attributes.

States and Compacts *continued*

The Nichols Ranch report is a supplement to the NRC's Generic Environmental Impact Statement for In-Situ Leach Uranium Milling Facilities (GEIS, NUREG-1910). The statement, which was published in June 2009, analyzed potential environmental impacts common to in-situ recovery facilities in the western United States. The Nichols Ranch supplement analyzes potential environmental impacts specific to the proposed facility.

In December 2009, NRC published a draft SEIS for Nichols Ranch for public comment. The final SEIS addresses the comments received on the draft report.

The Nichols Ranch SEIS, NUREG-1910 Supplement 2, is available on NRC's website at <http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1910/s2/>.

Southeast Compact

Southeast Compact Commission to Meet Prior to LLW Forum Meeting

March 23 in Orange Beach, Alabama

The Southeast Compact Commission for Low-Level Radioactive Waste Management will hold a meeting the day prior to the Low-Level Radioactive Waste Forum's upcoming spring 2011 meeting. (See related story, this issue.)

The Southeast Compact Commission will meet on March 23 at the Perdido Beach Resort in Orange Beach, Alabama. The LLW Forum is meeting in the same location on March 24 – 25.

The LLW Forum meeting is being co-sponsored by the Southeast Compact Commission and the

Central Interstate Low-Level Radioactive Waste Compact Commission.

Administrative Committee Meeting

The Southeast Compact Commission's Administrative Committee will meet at 12:30 pm on March 23 in Sand Castle I to discuss a draft Commission Records Retention Policy and to review the Commission Travel Policy.

Policy and Planning Committee Meeting

The Southeast Compact Commission's Policy and Planning Committee will meet at 2:00 pm on March 23 in Sand Castle I to review the Strategic Plan and to develop recommendations for the Commission to consider. The Committee will also review recommendations from the Ad Hoc Budget Review Committee with regard to seeking input from regional generators.

Compact Commission Meeting

The 97th business meeting of the Southeast Compact Commission will begin at 4:30 pm on March 23 in Sand Castle II. The Commission will receive committee reports and conduct other business as it may come before the Commission. The following items are on the draft agenda:

- ◆ Executive Director's report,
- ◆ Treasurer's report,
- ◆ state reports and liaison reports,
- ◆ report of the Policy and Planning Committee, including recommendations for revisions to the Strategic Plan,
- ◆ report of the Administrative Committee, and
- ◆ other new business.

All Committee and Commission meetings are open to the public.

LLW Forum Meeting

The LLW Forum will host its spring 2011 meeting from Thursday to Friday, March 24 to

25, at the Perdido Beach Resort in Orange Beach, Alabama. 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.

For additional information on the Southeast Compact Commission meetings, please contact the Southeast Compact Commission at (919) 821-0500 or at secc@secompact.org.

For additional information on the LLW Forum meeting, please contact Todd Lovinger at (202) 265-7990 or at llwforuminc@aol.com.

Southwestern Compact/State of California

US Ecology's Agreement to Purchase California Facility Expires

On February 8, 2011, US Ecology announced that its definitive agreement with Siemens Water Technologies Corporation to acquire the assets of a permitted treatment, storage and disposal facility located in Vernon, California has expired. According to US Ecology's press release, certain conditions required to close the agreement—which was originally announced on August 30, 2010—have not been met and the parties did not extend the agreement. “While the Company

remains in discussions with Siemens regarding the facility,” states the press release, no assurance can be made that those discussions will result in an amendment to the expired Agreement or a new agreement.”

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

(Continued from page 1)

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.)

During a meeting on June 12, 2010, however, the Commission voted to withdraw the proposed rules as published. In addition, the Commission stated

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their intent to use the revised proposed rules as the starting point for a new rulemaking effort, approving the addition of a new section on importation of waste for management purposes only.

On November 27, 2010, the Commission published revised Preliminary Rules on the Exportation and Importation of Waste (31 Texas Administrative Code §§675.21 – 675.24) in the *Texas Register* (35 *Texas Register* 10,425). On behalf of the Commission, staff from the TCEQ conducted a hearing on the proposed rules in Austin, Texas on December 9, 2010. (See *LLW Notes*, November/December 2010, pp. 15-20.)

There was a thirty-day period provided during which interested stakeholders could provide comment on the proposed rules—either post-marked or e-mailed by midnight on December 26, 2010. This latest thirty-day comment period was in addition to a previous sixty-day comment period, two stakeholder meetings, two public hearings and public testimony during four public meetings. (See *LLW Notes*, November/December 2010, pp. 15-21.)

On December 24, 2010, the Commission announced that it would hold a meeting on January 4, 2011. The published agenda included agenda items for the Commission to hear public comment on the proposed import and export rules and then discuss and possibly take final action thereon. (See *LLW Forum News Flash* titled, “Texas Compact Commission to Meet in Andrews: Proceed re Proposed Export/Import Rules,” December 28, 2010.)

A copy of the revised proposed rules, TCEQ hearing agenda, Commission meeting agenda and other related information may be found at <http://www.tllrwdcc.org>.

Distribution of Rule Package

On January 3, 2011, the Commission distributed a rule package at the request of Chairman Michael

Ford. The rule package includes sections addressing the following:

- ◆ Background and Summary of the Factual Basis for the Adopted Rules
- ◆ Public Comments
- ◆ Response to Public Comments
 - General Comments in Favor of the Rule
 - General Concerns Regarding Importation of Waste
 - Disposal Capacity
 - General Environmental Concerns
 - Siting and Licensing Issues
 - Long-Term Liability
 - Blending/Commingling Issues
 - Economics
 - Sufficiency of Funds and Fees
 - Penalties & Enforcement Issues
 - Transportation Issues
 - Application Process
 - Timing of the Rules & Administrative Procedure Act Requirements
 - Export Generally
 - Effective Date
 - Miscellaneous
 - Section-by-Section Comments on § 675.21
 - Section-by-Section Comments on § 675.22
 - Section-by-Section Comments on § 675.23
- ◆ Concise Restatement of Statutory Provisions

*For additional information and a copy of the rule package, please see *LLW Forum News Flash* titled, “Proposed Import/Export Rule Package Distributed by Texas Compact Commission in Advance of January 4 Meeting,” January 3, 2011.*

Legal Challenge

On December 30, 2010, Public Citizen and the Texas Civil Rights Project filed suit against the Commission and its Executive Director seeking

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injunctive relief based on alleged violations of the Texas Open Meetings Act (TOMA), the Administrative Procedure Act (APA), and the Texas Constitution. (See related story, this issue.)

Later that day, the District Court in Travis County, Texas issued a TRO that, among other things, prohibited the Commission from adopting, approving, or otherwise implementing proposed import and export rules at the Commission's meeting on January 4, 2011.

The Commission was not represented at the TRO hearing. Shortly after it concluded, however, lawyers from the Texas Attorney General's Office arrived and informed the court that they had not been officially notified of the pending court action and requested a new hearing on the injunction.

The next day, on December 31, 2010, the Commission filed a plea contesting the district court's jurisdiction over the matter and an emergency motion seeking to void or dissolve the TRO based, among other things, on lack of jurisdiction, failure to provide proper notice and issues not being ripe for resolution.

On January 3, 2011, GNI Consulting LLC ("GNI") -- a full-service political and public relations consulting firm with special expertise in new media that is based in Austin, Texas -- filed a Notice of Filing of Removal in the District Court in Travis County, Texas. Immediately thereafter, GNI filed a Notice of Removal seeking to remove the case to the U.S. District Court for the Western District of Texas, Austin Division, on the grounds that the action involves claims arising under the constitution of the laws of the United States.

In addition to the petition to intervene in the action on behalf of the plaintiffs filed by both GNI, a petition to intervene on behalf of the defendants was filed by Waste Control Specialists LLC on December 30, 2010.

A hearing on the matter was held at 3:00 pm on January 3 in the the U.S. District Court for the

Western District of Texas, Austin Division. At 5:37 pm the same day, the federal district court issued an order granting the intervenor's plea to jurisdiction, dismissing the lawsuit against the Commission, and dissolving the injunction issued by the state district court. In the order, the court stated as follows:

"[U]nder the Texas Administrative Procedures Act, § 2001.038, neither the state court nor this Court have jurisdiction to enjoin the Commission from adopting rules at a meeting. Rather, jurisdiction is limited to determining the 'validity or applicability of a rule' once it has been adopted."

According to various media reports, the incoming Governor of Vermont, Democrat Peter Shumlin, has publicly opposed allowing waste imports to the planned Texas Compact facility. Shumlin would have the authority to replace the two members appointed by his predecessor to the Commission, both of whom have previously expressed support for the proposed import and export rules. Shumlin, however, does not take office until January 6.

The Commission is composed of eight members and one alternate. The Texas Governor appointed six of the members, including the Chairman. The outgoing Vermont Governor appointed two of the members and an alternate.

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.

TCEQ Authorizes Commencement of Construction at WCS

Agency and Facility Operator Execute Lease Agreement

On January 7, 2011, Mark Vickery—the Executive Director of the Texas Commission on Environmental Quality (TCEQ)—approved the commencement of construction of the planned Waste Control Specialists LLC low-level radioactive waste disposal facility “subject to all applicable license conditions, rules and statutes.”

Earlier the same day, TCEQ and WCS executed a “Lease and Indemnification Agreement Concerning Low-Level Radioactive Waste Disposal in Andrews County, Texas.” The document sets forth provisions relating to conveyance of the Compact Waste Disposal Facility to the State of Texas, including indemnification for any liability imposed on the state.

One week earlier, WCS issued a press release announcing the beginning of initial infrastructure construction at the facility. According to the press release, construction of the new disposal facility is expected to take approximately one year to complete—with disposal operations scheduled to begin in late 2011.

For additional information, please contact Susan Jablonski—Director of the Radioactive Materials Division at TCEQ—at (512) 239-6466 or at sjablons@tceq.state.tx.us. You may also contact Rodney Baltzer—President of WCS—at (972) 450-4235 or at rbaltzer@valhi.net.

Commencement of Construction Authorization

License Condition No. 63 of the WCS’ Radioactive Material License Application No. R04100 states as follows:

The Licensee shall submit final construction documents to the executive director no later than 60 days prior to the planned commencement of facility construction. Commencement may not commence without the prior written approval of the executive director. Construction documents shall include, but are not limited to, all final design plans, elevations, and detail drawings; all final written design specifications and supporting calculations; all equipment vendor data sheets and drawings; all materials specifications and data sheets; construction schedules; construction quality assurance plans; engineering reports addressing compliance with applicable design codes and standards; and any other documents related to the construction of the facility.

After reviewing the final construction documents as defined above, TCEQ’s Executive Director determined that they “meet the requirements to address design and configuration of the disposal units; interim and final cover; surface water and stormwater management; rainwater capture and leachate collection, detection, and removal systems for the disposal units; and, design and relocation of any waste staging building.”

Accordingly, by letter dated January 7, 2011, the Executive Director approved “the commencement of construction subject to all applicable license conditions, rules and statutes.”

Lease and Indemnification Agreement

License Condition Nos. 29 and 43, as well as Section 401.211 of the Texas Health and Safety Code, require the licensee to indemnify the State of Texas for any liability imposed on the state. License Condition No. 20 and Section 401.205 of the Texas Health and Safety Code require the licensee to convey all right, title and interest in land and buildings for the Compact Waste

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Disposal Facility to the state. WCS has completed the conveyance to TCEQ, acting on behalf of the state.

Under the terms of the lease and indemnification agreement, TCEQ will now lease the premises to WCS for operation of the Compact Waste Disposal Facility. The lease remains in effect so long as the facility license is in full force and effect.

The agreement provides that WCS agrees to indemnify Texas for any liability imposed on the state for the Compact Waste Disposal Facility and the Federal Facility Waste Disposal Facility. Under its terms, the indemnity obligation “shall not be apportioned according to contribution, in negligence or otherwise.” The indemnification applies “whether or not such liabilities result, directly or indirectly, from: a) performance of an inherently dangerous activity, b) actions or omissions negligently, recklessly, or intentionally performed, or c) the actions or omissions of negligence or gross negligence of any of the State of Texas’ or TCEQ’s officers, employees, or contractors.”

The lease and indemnification agreement contains provisions relating to the license; lease of the premises; term; use of premises; impositions; repairs, alterations and additions; compliance with laws and regulations; liens, leasehold mortgage and collateral; subletting and assignment; indemnity; insurance; restoration of damage and destruction; default, remedies and termination; no limitation or waiver; notices; state fee; force majeure; and, miscellaneous.

WCS Press Release re Initial Infrastructure Construction

By letter dated December 3, 2010, TCEQ responded to a request from WCS for concurrence regarding the commencement of certain preparatory activities at the planned waste disposal facility. In the letter, TCEQ clarified that

“activities occurring outside the perimeter of the land disposal facility are acceptable at this time.” TCEQ cautioned, however, “activities within the perimeter of the planned land disposal facility are not acceptable.” (A complete copy of the TCEQ letter may be obtained at <http://www.tceq.texas.gov/assets/public/permitting/rad/wcs/20101203%20TCEQ%20responds%20to%20commencement%20of%20construction%20letter.pdf>.)

By press release dated December 31, 2010, WCS announced the beginning of initial infrastructure construction at the facility.

“Waste Control Specialists is proud to partner with Andrews, the state of Texas and the Texas Low-Level Radioactive Waste Disposal Compact Commission to provide a Texas Solution to the disposal of low-level radioactive waste,” said William Lindquist, Chief Executive Officer of WCS. “This is a historic moment because this project is the first of its kind to be built in more than 30 years. During that time our state and nation have seen this low-level radioactive material stockpiled in major cities, universities, research centers and power plants. Now public health and the environment will be protected because there is a safe, secure facility to permanently dispose of this material.”

The press release goes on to note the “significant safety, health and environment safeguards TCEQ directed be put in place” at the facility including, among others, 150 sampling wells and a \$136.5 million escrow account to cover closure, post-closure and long-term monitoring of the disposal facility.

According to the press release, construction of the new disposal facility is expected to take approximately one year to complete—with disposal operations scheduled to begin in late 2011.

Background re Proposed Import and Export Rules

On January 4, 2011, the Texas Low-Level Radioactive Waste Disposal Compact Commission (the "Commission") approved revised Preliminary Rules on the Exportation and Importation of Waste by a vote of five to two. (See related story, this issue.) Various amendments to the rules were accepted prior to passage, including those offered by the Vermont Commissioners that clarified issues regarding the reserving of disposal capacity at the regional commercial facility for generators from the State of Vermont.

The vote followed a series of legal maneuvers by Public Citizen and the Texas Civil Rights Project that attempted to block the Commission from proceeding to act on the proposed rules. The groups initially succeeded at getting a state district court judge to enjoin the Commission from adopting, approving, or otherwise implementing the proposed rules. However, a federal district judge subsequently dismissed the case and dissolved the temporary restraining order ("TRO") after determining that neither the state nor federal court had jurisdiction to prevent the Commission from acting on the proposed rules.

A copy of the revised proposed rules and other related information may be found on the Commission's 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.henderson@tllrwdcc.org.

Background re License Application Status

On January 14, 2009, by a vote of 2 to 0, TCEQ Commissioners denied hearing requests and approved an order on 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.)

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.

WCS 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.

WCS Files Supplemental Response re Rate Setting

By letter dated January 28, 2011, Waste Control Specialists LLC (WCS) responded to questions posed by the Texas Commission on Environmental Quality (TCEQ) regarding the company's pending rate setting application for the planned commercial low-level radioactive waste disposal facility in Andrews County, Texas.

WCS Response

WCS' response addresses the following topics:

- ◆ evidence that investments by Andrews County Holdings, Inc. in WCS prior to 2003 were made with the goal of licensing and

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developing a low-level radioactive waste disposal facility;

- ◆ why certain longer-lived assets had different useful lives and clarification as to why some assets were depreciated over the life of the disposal license while others were depreciated over a longer life;
- ◆ whether WCS met the “burden of proof” required by the rate setting rules;
- ◆ whether profits and losses from WCS’ hazardous waste operations would impact the revenue requirements for the Compact Waste Disposal Facility (CWF);
- ◆ whether net operating loss carry forwards from WCS’ historical operations should impact the revenue requirements for the CWF;
- ◆ reconciliation of capital expenditures estimated in the licensing process, the application, and other submissions such as the Andrews County Bond issuance documents;
- ◆ schedules that were either missing or did not print properly in previous submissions;
- ◆ additional explanations as to why closure costs for the Federal Waste Disposal Facility (FWF) were similar to those for the CWF when the FWF is much larger than the CWF;
- ◆ why a super compactor was included in the equipment list for the CWF when such an item is not currently authorized by WCS’ license;
- ◆ why the computer hardware and related costs were used and useful to the CWF;
- ◆ whether WCS had any additional support for the requested rate of return;
- ◆ whether and how the requested post-operations rate of return would change if certain costs, particularly the RD&D asset, were disallowed;
- ◆ how costs and related revenue requirements were distributed among the various waste classes;
- ◆ whether there was additional information supporting the makeup, reasonableness, and usefulness of the Intercompany Services Agreement (ISA) costs to the CWF; and,
- ◆ whether WCS had any additional responses to the comments received during the public

comment period that ended on November 16, 2010.

WCS’ January 28 letter and the associated appendices can be found at <http://www.tceq.state.tx.us/permitting/radmat/licensing/rates>.

Past Responses

TCEQ sent the first Request for Information (RFI) letter to WCS on September 1, 2010—following completion of the agency’s initial review of the rate setting application. The first RFI requested that the company submit additional information to clarify and justify several items in the application. Although the letter noted that the request does not constitute a formal audit, TCEQ pointed out that “WCS, as the rate applicant, has the burden of proof in the rate-setting process.” TCEQ received WCS’ response to the RFI on October 15, 2010. (See *LLW Notes*, September/October 2010, pp. 18-20.)

Subsequently, TCEQ orally posed additional questions to WCS about its application and the responses to the RFI. The January 28 letter constitutes WCS supplemental response and related information and documentation.

Background

On June 1, 2010, WCS filed an application with TCEQ to establish the maximum disposal rates for commercial low-level radioactive waste disposal at its planned facility in Andrews County, Texas. (See *LLW Notes*, May/June 2010, pp. 19-20.)

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

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disposal by generators from outside of the Texas Compact region.

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.

License Application Status

On January 14, 2009, by a vote of 2 to 0, TCEQ Commissioners denied hearing requests and approved an order on 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.) 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 final license stated that

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

On January 7, 2011, TCEQ's Executive Director approved the commencement of construction of the planned waste disposal facility "subject to all applicable license conditions, rules and statutes." (See related story, this issue.) Earlier the same day, TCEQ and WCS executed a "Lease and Indemnification Agreement Concerning Low-Level Radioactive Waste Disposal in Andrews County, Texas." The document sets forth provisions relating to conveyance of the Compact Waste Disposal Facility to the State of Texas, including indemnification for any liability imposed on the state. One week earlier, WCS issued a press release announcing the beginning of initial infrastructure construction at the facility. According to the press release, construction of the new disposal facility is expected to take approximately one year to complete—with disposal operations scheduled to begin in late 2011.

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.

For additional information on the rate setting application and associated review process, please contact TCEQ Project Manager Sage Chandrasoma at (512) 239-6069 or at schandra@tceq.state.tx.us.

LWV-TX Hosts Forum on Waste Storage in Texas

On February 8, 2011, the League of Women Voters of Texas (LWV-TX) sponsored a forum in Austin, Texas to discuss low-level radioactive waste management and related issues. The event took place from 1:00 pm to 4:30 pm in Room E1.010 in the Texas State Capitol Extension. There was no charge to attend the forum, which was open to the public, although reservations were requested.

“Informed decision makers determine better public policy,” stated the LWV-TX announcement. “All legislators, aides and members of the public will hear about the import and storage of low-level radioactive waste (LLRW) in the current Waste Control Specialists (WCS) disposal site in Andrews County, Texas. Learn about LLRW, assurances, regulations and their enforcement as they relate to the WCS site. Come learn the facts presented by the people who know to avoid accidents and added costs to the Texas budget, and protect the health and safety of people and the environment.”

The forum—which was titled “How Can Radioactive Waste Be Stored Safely, Protect Texans, the State Budget and the Environment?”—included the following three panels:

Panel One: Project Overview and Scope

- ◆ Rodney Baltzer, President of Waste Control Specialists LLC
- ◆ Texas Commission on Environmental Quality, Director or Staff Member (to be determined) of the Radioactive Materials Division
- ◆ Bob Gregory, Commissioner of the Texas Low-Level Radioactive Waste Disposal Compact Commission and Chief Executive Officer & Principal Owner of Texas Disposal Systems, Inc.

Panel Two: Risks

- ◆ Arjun Makhijani, President of the Institute for Energy and Environmental Research
- ◆ Michael Herrmann, President of Legacy Risk Solutions LLC & Environmental Insurance and Risk Management
- ◆ Glenn Lewis, former member of the TCEQ panel that reviewed the WCS license application for a radioactive waste disposal facility

Panel Three: Transparency, Public Participation and Next Steps for Legislature

- ◆ Anita Privett, Advocacy Vice President of the League of Women Voters
- ◆ Tom “Smitty” Smith, Texas Director of Public Citizen

Janet Imhoff, Vice President of the LWV-TX Education Fund, provided welcome remarks at the forum. Susybelle Gosslee, Director of the LWV-TX, served as facilitator. Questions were answered following each panel and again at the conclusion of the forum for all panelists.

For additional information, please go to www.lwvtexas.org.

Public Citizen et. al. v. Texas Low-Level Radioactive Waste Disposal Compact Commission

Federal District Court Dissolves TRO Against Texas Compact Commission Regarding Proposed Import/Export Rules *January 4 Commission Meeting Proceeds as Planned*

On January 4, 2011, the U.S. District Court for the Western District of Texas, Austin Division, issued a written order dissolving a temporary restraining order ("TRO") issued by the District Court in Travis County, Texas, against the Texas Low-Level Radioactive Waste Disposal Compact Commission (the "Commission") that, among other things, would have prohibited the Commission from adopting, approving, or otherwise implementing proposed import and export rules at its meeting on Tuesday, January 4, 2011. In addition, the court granted the intervenor's plea to jurisdiction before the federal district court and dismissed the case.

In so doing, the court found as follows:

"[U]nder the Texas Administrative Procedures Act, § 2001.038, neither the state court nor this Court have jurisdiction to enjoin the Commission from adopting rules at a meeting. Rather, jurisdiction is limited to determining the 'validity or applicability of a rule' once it has been adopted."

Shortly thereafter, at a meeting held on January 4, 2011, the Commission approved revised Preliminary Rules on the Exportation and Importation of Waste by a vote of five to two. Various amendments to the rules were accepted prior to passage, including those offered

by the Vermont Commissioners that clarified issues regarding the reserving of disposal capacity at the regional commercial facility for generators from the State of Vermont. (See related story, this issue.)

Plaintiffs' TRO Petition

On December 30, 2010, Public Citizen and the Texas Civil Rights Project filed suit against the Commission and its Executive Director seeking injunctive relief based on alleged violations of the Texas Open Meetings Act (TOMA), the Administrative Procedure Act (APA), and the Texas Constitution.

The following is a brief overview of some of the allegations contained in the plaintiffs' request for injunctive relief. Persons seeking greater detail are directed to the suit itself.

Alleged Defective Comment E-mail Address

The plaintiffs argued that the Commission "advertised a non-existent, false email address to which the public was to send comments on the proposed rules ... [which] effectively denied the unsuspecting public the right to submit, and to have considered by the Commission, their written comments on proposed rules *before* the agency votes on the proposed rules." Plaintiffs asserted that, as a direct result of publication of the defective e-mail address, comments from a significant number of interested persons failed to reach the Commission.

Sunday Closing of Comment Period Plaintiffs also pointed out that the deadline for submitting comments fell on a Sunday. They contended that, by law, the Commission should have extended the deadline until the following Monday. Failure to do so, according to the plaintiffs, constitutes denial of a reasonable opportunity for public comment.

Ability to "Consider Fully" Comments The plaintiffs noted that the APA requires a state agency to "consider fully all written and oral

submissions about a proposed rule.” By proceeding with the scheduled January 4 meeting, the plaintiffs asserted that the Commission would violate this provision in two ways. First, they argued that the Commission would not be able to consider comments that it did not receive due to the alleged defective e-mail address. Second, they contended that the Commission has received over 4,000 comments with only one employee assigned to review them. “It appears to be physically impossible for the Commission to ‘consider fully’ that volume of comments in the time available.”

Reasonableness of Comment Period The Texas Constitution requires, according to the plaintiffs, that the public be provided a reasonable time to comment. Plaintiffs contended that the Commission failed to do so in the case at hand.

Effectiveness of Commission Meeting Notice The plaintiffs asserted that the notice about the Commission meeting scheduled to be held on January 4 was insufficient as a result of the alleged defective e-mail address. In particular, they complained that the Commission would not be “considering” all public “comments provided.” Moreover, they asserted that some of the persons that provided comments to the defective e-mail address may rely on the agenda and believe that they need not attend the January 4 hearing to present oral comments.

Regulatory Analysis Requirements According to the plaintiffs, the proposed rules being considered by the Commission constitute major environmental rules that require, under the APA, a regulatory impact analysis prior to adoption. As the plaintiffs contended that the Commission failed to follow the APA procedures, they asserted that the January 4 meeting was for a purpose inconsistent with Texas law.

Due to the above-alleged violations, among others, the plaintiffs sought a temporary restraining order and temporary injunction to preserve the status quo.

District Court’s TRO Order

On December 30, 2010, the district court issued an *ex parte* TRO enjoining the Commission from considering nearly each and every item on the posted agenda for the January 4 meeting. In addition to restraining the Commission from taking action on the rule, the order prohibited the Commission from taking action on export and import requests filed by various waste generators and the compact facility.

In addition, the TRO ordered the defendants to appear at a hearing and show cause, if any, as to why a temporary injunction should not be issued as requested by the plaintiffs.

The plaintiffs were required to file a one hundred dollar bond with the clerk of the court in order for the TRO to become effective.

The TRO stated that it would remain in effect for fourteen days or until further order of the court.

Defendants’ Plea and Emergency Motion

On December 31, 2010, the Commission filed a plea contesting the district court’s jurisdiction over the matter and an emergency motion seeking to void or dissolve the TRO based, among other things, on lack of jurisdiction, failure to provide proper notice and issues not being ripe for resolution.

The following is a brief overview of some of the arguments contained in the defendants’ plea and emergency motion. Persons seeking greater detail are directed to the pleading itself.

Notice to Attorney General Defendants complained that no notice was provided to the Attorney General’s office, “[d]espite the obvious fact the Compact Commission is a ‘governmental entity.’” They noted that counsel for defendants requested that the Plaintiff tender certification, but counsel for plaintiffs failed to produce this

documentation. They further noted that the undersigned Assistant Attorneys General have continuously provided counsel to the Commission since February 2009 and have appeared at each and every Commission meeting.

Service to Commission Chairman Defendants further asserted that the plaintiffs did not personally serve the Commission's Chairman (Michael Ford) with their suit prior to the TRO hearing, nor did they confer with Ford as to whether or not he had counsel in this litigation. Defendants contended that Ford learned about the threat of a suit from a reporter, after which time he requested representation from the Attorney General's Office. "Had the Plaintiffs properly contacted Mr. Ford," stated the defendants, "they would have learned that the Attorney General's Office would appear at the TRO hearing." Upon learning that the proceeding was ongoing, or had occurred, the defendants stated that the Assistant Attorneys General immediately proceeded to the court house and made oral motions to (1) have the TRO voided for lack of jurisdiction or (2) have the void TRO immediately dissolved.

Proper Jurisdiction The defendants argued that the Travis County District Court lacked jurisdiction to consider this lawsuit and enter a TRO. As support, the defendants pointed to Texas Health & Safety Code § 403.006, subsection 3.06, which provides that all suits against the Commission must be brought in federal district court for the Western District of Texas.

Ripeness Defendants also asserted that the suit is not ripe as the plaintiffs' allegations are based on potential adoption of a rule at a meeting that has not yet occurred. "Ripeness is a component of subject matter jurisdiction and a suit must [be] dismissed for lack of jurisdiction," stated the defendants. Defendants noted that the APA provides a specific remedy if and when a rule is promulgated in violation of its procedural requirements. The court's action at this juncture, according to the defendants, "poses a potential

violation of the separation of powers doctrine."

Receipt of Comments In their pleadings, the defendants noted that they received over 5,000 comments on the proposed rule, in addition to the 3,500 or more comments received this spring on the original rule. Defendants noted that many of the comments were identical. As to the plaintiffs' statements regarding an alleged defective e-mail address, the defendants noted that only one person is specifically alleged to have had his comment "bounce back" and that the Commission has indeed received said person's comment. In addition, various media reports stated that the Commission acknowledged a problem with the e-mail address, but quickly resolved the problem once it was brought to the Commission's attention.

Based on the above allegations, among others, the defendants requested that the court hear their plea and emergency motion on January 3 and immediately declare the TRO void because (1) jurisdiction properly lies in federal court and (2) the injunctive relief sought is not ripe in this case. In the alternative, the defendants requested that the court dissolve the TRO at this time on the basis that the plaintiffs inappropriately obtained an ex parte TRO without proper notice and service and because "their pleadings fail to show that there is a ripe justiciable claim for which they will suffer irreparable harm."

Intervention and Removal to Federal Court

On January 3, 2011, GNI Consulting LLC ("GNI")—a full-service political and public relations consulting firm with special expertise in new media that is based in Austin, Texas—filed a Notice of Filing of Removal in the District Court in Travis County, Texas. Immediately thereafter, GNI filed a Notice of Removal seeking to remove the case to the U.S. District Court for the Western District of Texas, Austin Division, on the grounds that the action involves claims arising under the constitution of the laws of the United States.

In addition to the petition to intervene in the action on behalf of the plaintiffs filed by GNI, a petition to intervene on behalf of the defendants was filed by Waste Control Specialists LLC on December 30, 2010.

Dissolution of TRO and Dismissal of Case

A hearing on the matter was held at 3:00 pm on January 3 in the the U.S. District Court for the Western District of Texas, Austin Division. At 5:37 pm that evening, the federal district court issued an order granting the intervenor's plea to jurisdiction, dismissing the lawsuit against the Commission, and dissolving the injunction issued by the District Court in Travis County, Texas. In the order, the court states as follows:

"[U]nder the Texas Administrative Procedures Act, § 2001.038, neither the state court nor this Court have jurisdiction to enjoin the Commission from adopting rules at a meeting. Rather, jurisdiction is limited to determining the 'validity or applicability of a rule' once it has been adopted."

According to various media reports, the incoming Governor of Vermont, Democrat Peter Shumlin, had publicly opposed allowing waste imports to the planned Texas Compact facility. Shumlin would have the authority to replace the two members appointed by his predecessor to the Commission, both of whom have previously expressed support for the proposed import and export rules. Shumlin, however, was not scheduled to take office until January 6.

The Commission is composed of eight members and one alternate. The Texas Governor appointed six of the members, including the Chairman. The outgoing Vermont Governor appointed two of the members and an alternate.

Background on Proposed Import/Export Rules

The 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.)

During a meeting on June 12, 2010, however, the Commission voted to withdraw the proposed rules as published. In addition, the Commission stated their intent to use the revised proposed rules as the starting point for a new rulemaking effort, approving the addition of a new section on importation of waste for management purposes only.

On November 27, 2010, the Commission published revised Preliminary Rules on the Exportation and Importation of Waste (31 *Texas Administrative Code* §§675.21 – 675.24) in the *Texas Register* (35 *Texas Register* 10,425). On behalf of the Commission, staff from the TCEQ conducted a hearing on the proposed rules in

(Continued on page 46)

Advisory Committee on Reactor Safeguards (ACRS)

ACRS Holds January and February Meetings

The U.S. Nuclear Regulatory Commission's Advisory Committee on Reactor Safeguards (ACRS) held public meetings on January 13-15 and then again on February 10-12 at the agency's headquarters in Rockville, Maryland.

January Meeting

During the January meeting, ACRS members addressed the following topics:

- ♦ aircraft impact assessment for the revised AP1000 reactor design;
- ♦ final safety evaluation report associated with the Vogtle reactor Units 3 and 4 combined license application;
- ♦ draft final revision to regulatory guidance on approaches for probabilistic risk assessment in risk-informed decisions on nuclear plant-specific changes to the licensing basis; and,
- ♦ draft final rule and regulatory guidance regarding enhancements to emergency preparedness regulations for nuclear power plants.

February Meeting

During the February meeting, ACRS members addressed the following topics:

- ♦ the final safety evaluation report for the Palo Verde nuclear power plant's license renewal application;
- ♦ the final safety evaluation report for the Combined Operating License for Virgil C. Summer nuclear power plant units 2 and 3;
- ♦ current state of nuclear power plant licensee efforts to transition to the National Fire Protection Association Standard 805; and,

- ♦ the Commission paper on the use of containment accident pressure in analyzing emergency core cooling system and containment heat removal system pump performance in postulated accidents at nuclear power plants.

2011 ACRS Meeting Schedule

The ACRS has posted its 2011 schedule, which is available at <http://www.nrc.gov/reading-rm/doc-collections/acrs/agenda/2011/>. The meetings are scheduled for the following dates: January 13-15; February 10-12; March 10-12; April 7-9; May 12-14; June 8-10; July 13-15; September 8-10; October 6-8; November 3-5; and, December 1-3.

The ACRS advises the Commission, independently from the NRC staff, on safety issues related to the licensing and operation of nuclear power plants and in the areas of health physics and radiation protection.

U.S. Department of Energy

DOE Releases Draft GTCC EIS for Public Comment

On February 18, 2011, the U.S. Department of Energy released for public review and comments its draft Environmental Impact Statement (EIS) for the disposal of Greater-Than-Class C (GTCC) low-level radioactive waste and GTCC-like waste.

A DOE official will be giving a presentation on the draft EIS at the upcoming LLW Forum meeting in Orange Beach, Alabama on March 24-25, 2011. Additional information on the LLW Forum meeting—including a registration form, meeting bulletin and draft agenda—can be found on the organization's web site at www.llwforum.org.

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The draft EIS (DOE/EIS-0375D) is available on the department's NEPA website at <http://nepa.energy.gov/1653.htm> and on the GTCC website at <http://www.gtccis.anl.gov/>.

Draft GTCC EIS

The draft EIS provides the public and interested stakeholders with information on options for the disposal of GTCC and GTCC-like waste. It analyzes potential environmental impacts from constructing and operating a new facility or facilities for the disposal of such wastes, as well as the impacts of using an existing facility.

Disposal Methods The draft EIS evaluates several disposal methods including:

- ◆ deep geological repository;
- ◆ intermediate depth boreholes;
- ◆ enhanced near surface trenches; and,
- ◆ above grade vaults.

Disposal Locations The draft EIS analyzes various potential disposal locations including:

- ◆ the Hanford Site in Washington;
- ◆ the Idaho National Laboratory in Idaho;
- ◆ the Los Alamos National Laboratory;
- ◆ the Waste Isolation Pilot Project (WIPP);
- ◆ the WIPP vicinity in New Mexico;
- ◆ the Nevada National Security Site (formerly the Nevada Test Site) in Nevada; and,
- ◆ the Savannah River Site in South Carolina.

The draft EIS also evaluates generic commercial disposal sites in four regions of the U.S., as well as a no action alternative as required under the National Environmental Policy Act (NEPA).

Identification of a Preferred Alternative The draft EIS states that DOE does not have, nor did the department identify, a "preferred alternative" for the disposal of GTCC and GTCC-like waste. However, DOE plans to include a preferred alternative in the final EIS based on the analysis in the draft EIS and public comments received

thereon. This preferred alternative could include a combination of two or more alternatives, based on the characteristics of the waste and other key factors.

Comment Period A *Federal Register* notice regarding the draft EIS will be published on February 25, 2011. This will start a 120-day public comment period, during which DOE will hold meetings at the DOE sites that are evaluated in the draft EIS for the disposal of GTCC and GTCC-like waste.

Written and oral comments may be provided at these hearings. Written comments may also be provided via the GTCC EIS website. DOE will consider all comments received or postmarked by the end of the public comment period and will consider late comments to the extent practicable in preparing the final EIS.

Public Hearings DOE plans to hold public hearings on the draft EIS at these locations this spring:

April 19, 2011: North Augusta, South Carolina
April 26, 2011: Carlsbad, New Mexico
April 27, 2011: Albuquerque, New Mexico
April 28, 2011: Santa Fe, New Mexico
May 9, 2011: Las Vegas, Nevada
May 11, 2011: Idaho Fall, Idaho
May 17, 2011: Pasco, Washington
May 19, 2011: Portland, Oregon
May 25, 2011: Washington, DC

Next Steps: Pursuant to Section 631 of the Energy Policy Act of 2005, before DOE makes a final decision on the disposal method or location, the department must submit a report to Congress that includes a description of the disposal alternatives under consideration and all of the information required in the comprehensive report on ensuring the safe disposal of GTCC waste that was submitted by the Secretary of Energy to Congress in February of 1987. DOE must then await action by Congress prior to proceeding further.

Background

Under the Low-Level Radioactive Waste Policy Amendments Act of 1985, the federal government is responsible for the disposal of GTCC waste. DOE is the federal agency charged with responsibility for developing said disposal capacity.

GTCC waste consists of a small volume of low-level radioactive waste generated throughout the United States as the result of Nuclear Regulatory Commission and Agreement State licensed activities including, among other things, the:

- ◆ production of electricity from nuclear power plants;
- ◆ production and use of radioisotopes for diagnostics and treatment of cancer and other illnesses;
- ◆ oil and gas exploration; and,
- ◆ other industrial uses.

“GTCC-like” waste consists of DOE owned or generated low-level radioactive waste and potential non-defense transuranic waste which is similar to GTCC waste and for which there is currently no available disposal capability. GTCC waste and GTCC-like waste does not include spent nuclear fuel or high-level waste.

The total volume of GTCC waste and GTCC-like waste currently in storage is approximately 1,100 cubic meters. Over the next 60 years, the draft EIS estimates that on average, an additional 175 cubic meters will be generated each year from commercial and DOE, primarily from cleanup operations.

For additional information, please contact Arnie Edelman—EIS Document Manager at DOE’s Office of Environmental Management—at (301) 903-5145.

Final SER Issued for Proposed Mixed-Oxide Fuel Fabrication Facility

On December 27, 2010, the U.S. Nuclear Regulatory Commission announced the publication of its final safety evaluation report (SER) for a license application by Shaw AREVA MOX Services LLC to possess and use radioactive material at the Mixed-Oxide Fuel Fabrication Facility at the U.S. Department of Energy’s Savannah River Site near Aiken, South Carolina. The SER, which was reviewed by the Advisory Committee on Reactor Safeguards, was approved for publication in September 2010.

The report, which has been redacted to remove security related and proprietary information, documents the NRC staff’s technical safety review of MOX Services’ operating license application for the facility. It reviews the applicant’s financial qualifications, plans for protection of classified matter, organization and administration, integrated safety analysis, nuclear criticality safety, fire protection, chemical safety, radiation safety, environmental protection and plant systems.

The report contains the staff’s conclusion that the applicant’s descriptions, specifications, commitments and analyses provide an adequate basis for safety and safeguards of facility operations and that operation of the facility would not pose an undue risk to worker and public health and safety.

The report does not represent a decision to issue the license, which will only be issued if the NRC verifies that the applicant has properly constructed principal structures, systems and components—which is expected to be several years away.

NRC issued a Construction Authorization for the facility in March 2005. Construction is under

way. The facility is part of an agreement between the United States and the Russian Federation to dismantle thousands of Cold War-era nuclear weapons by using the plutonium from warheads to manufacture fuel for civilian nuclear power reactors. The facility would combine plutonium and uranium oxides to make the mixed-oxide, or MOX, fuel. It is the only MOX fuel fabrication facility being built in the United States.

The redacted SER for the MOX facility will be published as a NUREG document and can be presently found in the NRC's online ADAMS database at <http://www.nrc.gov/reading-rm/adams/web-based.html> by searching for accession number ML103430615. Additional information about the MOX review is available at <http://www.nrc.gov/materials/fuel-cycle-fac/mox/licensing.html>.

U.S. Department of Energy and U.S. Nuclear Regulatory Commission

DOE & NRC to Host Joint Workshop on Revising LLW Standards

Background

DOE and NRC are conducting a joint workshop immediately following the Annual Waste Management Conference in Phoenix, AZ, to discuss potential changes to the agencies' low-level radioactive waste (LLRW) disposal standards. DOE is currently undertaking revisions to its Radioactive Waste Management Order 435.1. NRC staff is preparing a Commission paper that identifies approaches for risk-informed, performance-based comprehensive revisions to 10 CFR Part 61.

Purpose

To obtain public comments on potential changes to LLRW management criteria.

Who Should Attend

Anyone with an interest in LLRW disposal—generators, processors, disposal facility operators, states, low-level radioactive waste compacts, advocacy groups, and members of the public—should attend the workshop. Although this workshop is not part of the Waste Management 2011 Conference, it is being held the day after that conference ends and in the same area to facilitate attendance.

Date and Time

The workshop will be held on Friday—March 4, 2011—from 8:30 am - 5:00 pm.

Place

The workshop will take place at the following location:

Hyatt Regency, Regency A Ballroom
122 North Second Street
Phoenix, AZ 85004

Cost

The workshop is being provided free of charge to all interested attendees—i.e., there will be no fee to attend.

NRC has posted a formal notice about the workshop on the agency's web site at www.nrc.gov. For additional information, please contact Mike Lee of the NRC at (301) 415-6887.

Federal Workshop Held re Extended Operation for Nuclear Power Plants

On February 22-24, 2011, the U.S. Nuclear Regulatory Commission, the U.S. Department of Energy, and the Nuclear Energy Institute jointly sponsored a second workshop on U.S. nuclear power plant operations extension research and development. The workshop was held at the L'Enfant Plaza Hotel in Washington, DC.

NRC and DOE co-sponsored a similar workshop in February 2008. That workshop focused on technical research issues to support safe “long-term operations” beyond a reactor’s initial 40-year license and 20-year license renewal period. The upcoming workshop will review the accomplishments to date, discuss ongoing long-term operations activities, and consider areas requiring additional attention. Both workshops were open to the public.

For additional information, please contact C.E. (Gene) Carpenter, Jr., Group Lead for Aging Management Issues at NRC, at (301) 251-7632 or at Gene.Carpenter@nrc.gov; Richard Reister, Federal Project Director of the Light Water Reactor Sustainability Program at DOE, at (301) 903-0234 or at Richard.Reister@nuclear.energy.gov; Julie Keys, Senior Project Manager at NEI, at (202) 739-8128 or at jyk@nei.org; or John Gaertner, Technical Executive at the Electric Power Research Institute, at (704) 595-2666 or at jgaertner@epri.com.

U.S. Nuclear Regulatory Commission

NRC Releases SECY Paper re 10 CFR Part 61 Revisions

The U.S. Nuclear Regulatory Commission recently released SECY-10-0165. The paper, which is dated December 27, 2010, provides the Commission with the staff’s approach to initiate activities related to a risk-informed, performance-based (RI/PB) comprehensive revision to 10 CFR Part 61 (“Licensing Requirements for Land Disposal of Radioactive Waste”).

A copy of SECY-10-0165 may be obtained using the direct link at <http://www.nrc.gov/reading-rm/doc-collections/commission/secys/2010/secy2010-0165/2010-0165scy.pdf>. You may also obtain a copy by going to the agency’s website at www.nrc.gov and clicking on the link for ADAMS and searching under accession number ML103400242.

Stakeholder Involvement

As part of the initial Part 61 rulemaking, in the late 1970’s and early 1980’s, staff conducted four public meetings and three technical workshops to obtain stakeholder views on the scope and content of any commercial LLW regulation. At the time, there was little practical experience relevant to the management of LLW. Accordingly, staff used the public meetings and workshops to gain a better understanding of the engineering standards and disposal practices that might need to be employed in managing commercial LLW.

In SECY-10-0165, staff recommends that it again engage stakeholders prior to the start of the rulemaking process. Specifically, staff would seek to solicit stakeholder views on whether there should be amendments to the current Part 61 and, if so, what should be the nature of such amendments. “The purpose of these meetings,” writes the staff, “would be to gather information from a broad spectrum of stakeholders concerning

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their continued support for the existing Part 61, recommendations for specific changes to the existing rule, or suggestions for possible new approaches to commercial low-level radioactive (LLW) management.”

Staff plans to hold the first stakeholder meeting in Phoenix, Arizona on March 4, 2011. The meeting, which will be structured as a joint NRC-DOE workshop on LLW management, will be held after the 2011 Waste Management Symposia in order to take advantage of the large stakeholder presence expected at the conference. Following the Phoenix meeting, staff plans to conduct one or more public meetings with stakeholders (subject to the availability of resources) later in calendar years 2011 and 2012.

Staff plans to use these meetings “to gather information from a broad range of stakeholders concerning their support for the existing Part 61 regulatory model for the management of commercial LLW, recommendations for specific rule changes, or suggestions for possible new approaches to commercial LLW management.” During the meetings, stakeholders will be invited to comment on possible RI/PB options presented by the staff or to suggest alternative regulatory strategies for commercial LLW management.

The LLW Forum has surveyed compacts and host states regarding potential implications of revisions to Part 61, the results of which were forwarded to NRC in advance of the March 2011 workshop. Accordingly, any members that have yet to submit their analysis are encouraged to do so immediately.

Proposed RI/PB Options

In connection with any potential rulemaking action, staff has identified the following possible RI/PB options:

1. Risk-Inform the Current Part 61 Waste Classification Framework: This option would preserve the current Part 61 waste classification designations for Class A, B and C LLW, but would re-evaluate them in the context of the

updated dosimetry developed by the International Commission on Radiation Protection (ICRP). Implementation of this rulemaking option, which staff believes to be consistent with earlier Commission direction provided in SRM-SECY-08-147, may lead to re-assignment of one or more of the 12 radionuclides between the two concentration tables in § 6.155(a), based on the updated ICRP dosimetry.

2. Comprehensive Revision to Part 61: Under this option, NRC would undertake a comprehensive revision to Part 61, consistent with RI/PB principles. The specific nature of the revisions has yet to be defined and would be developed in concert with stakeholders through a series of public workshops. Staff anticipates that this option would consider both existing and emerging LLW streams and, in so doing, would provide management solutions that potentially could include both near-surface as well as intermediate depth disposal.

3. Site-Specific Waste Acceptance Criteria: This option would essentially entail NRC adoption of the DOE system (i.e., Waste Management Order 435.1-1), either in whole or in part, for the management of commercial LLW. Currently, waste generators within the DOE complex take into account life-cycle planning considerations to assist them in complying with site-specific waste acceptance criteria (WAC) for a particular disposal facility. This ensures that government-owned waste has an identified disposal path. By relying on a performance-based directive coupled with a site-specific WAC, DOE field managers have the flexibility to determine the quality and quantity of waste that can be disposed of at a particular site based on disposal facility site, design, and waste inventory. As with option one above, this option would focus primarily on changes to § 6.155(a).

4. International Alignment: This option involves consideration by NRC of the adoption of the recent recommendations of the International Atomic Energy Agency (IAEA) for the management of radioactive wastes. The

recommendations are included in General Safety Guide-1 (GSG01), which outlines a comprehensive management approach to radioactive wastes by relating the radiological hazard posed by a particular waste stream to a specific disposition strategy. (See http://www-pub.iaea.org/MTCD/publications/PDF/Pub1419_web.pdf.) The GSF-1 system includes waste classes that would be classified as high-level radioactive wastes, Greater-Than-Class C wastes, LLW and wastes amenable to decay in storage under the current U.S. system. The principle difference between the IAEA recommendations and the current Part 61 rule is the definition of LLW. In contrast to the Part 61 definition, the IAEA system specifies sub-categories of LLW—including IAEA-designated exempt wastes (EW), as well as very low-level radioactive wastes (VLLW).

5. Supersede Direction Given in SRM-08-0147: Under this option, the Commission would maintain the status quo by superseding its earlier direction to risk-inform the waste classification tables. This would result in no further changes to the existing Part 61 regulation other than the ongoing rulemaking for unique waste streams to add an explicit performance assessment requirement to Part 61.

(Each of these five possible RI/PB options is discussed in detail in the first enclosure to SECY-10-0165.)

General Policy Issues and Policy Statement

In developing the above-identified five options, staff identified the following policy issues for consideration by the Commission: the National Environmental Policy Act (NEPA); the Low-Level Radioactive Waste Policy Amendments Act of 1985; implementation; earlier stakeholder interest; and, clearance. (Each of these five policy issues is discussed in detail in the second enclosure to SECY-10-0165.)

In regard to Low-Level Radioactive Waste Policy Amendments Act of 1985 considerations that

would apply to any rulemaking option that abandons or modifies the current designation of LLW as Class A, B, or C, and GTCC, staff state as follows:

A change in the Part 61 classification scheme would create inconsistencies between the disposal regulations and the scheme developed by Congress to assign responsibility for the disposal of LLW. Responsibility for the disposal of LLW is assigned through the Low-Level Radioactive Waste Policy Amendments Act of 1985 (LLWPAA), which assigns responsibility based on the classification of the waste in § 6.155 as it existed in January 1983. Under the current regulations, the classification for the purposes of Part 61 disposal and assigning responsibility are identical, changes to the Part 61 classification scheme would create inconsistencies between the two systems. These inconsistencies would require LLW generators to go through a two-step process prior to the disposal of LLW: (1) determine who is responsible for disposal of the LLW based upon the 1983 regulations; and (2) determine how to properly dispose of the LLW using the new Part 61 regulations.

This new process will result in four scenarios with respect to LLW that are now acceptable for disposal at a Part 61 facility: (1) Waste that is a State responsibility under the LLRWPA and that is acceptable for disposal at a Part 61 facility; (2) LLW that is a State responsibility under LLRWPA and is no longer acceptable for disposal at a Part 61 facility; (3) LLW that is a Federal responsibility and that is acceptable for disposal at a Part 61 facility; and (4) LLW that is a Federal responsibility and that is no longer acceptable for disposal at a Part 61 facility. Under these four scenarios, only one scenario, scenario (2), is of concern. The other scenarios have [or will have] disposal pathways available (i.e.,

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at either State or Federal facilities), scenario (2), however, would result in a waste stream that is a State responsibility, but at the same time is not acceptable for disposal at a Part 61 facility.

The staff has considered this issue, and believes that it will be able to take action to address scenario 2 before it becomes a problem. LLW that is currently eligible for disposal at Part 61 facilities and would be excluded by the revisions to Part 61 will be identified by disposal facility regulators before the start of this comprehensive rulemaking as part of the process implemented by the unique waste streams rulemaking. This comprehensive look at Part 61 will allow the staff to evaluate this LLW (if any exists) and possibly develop regulations to allow for the safe disposal of this LLW at a Part 61 facility.

The one minor problem that neither rulemaking can address is the additional step discussed above that will be necessary to determine the appropriate disposal pathway for the waste. Under the new system, LLW generators will have to first assess whether the State or the Federal government is responsible for the disposal of the LLW through the LLRWPA system. Generators will then use the new Part 61 requirements to determine how to appropriately dispose of the LLW.

While recognizing that it is not a policy issue *per se*, staff notes that any rulemaking on Part 61 would need to be coordinated with any update to Part 20 in order to ensure consistency on the use of the definition and concepts related to members of the public, dosimetry, and worker exposure.

In 1994 and 1995, NRC staff developed a *Policy Statement* on probabilistic risk assessment (PRA). The document was approved by the Commission and published in the *Federal Register* (59 *Federal Register* 63,389 and 60 *Federal Register* 42,622). This *Policy Statement* informed the development

of RI/PB regulation. Since its publication, the staff has developed a number of Commission papers on the application of PRA to the NRC's waste disposal programs. (A summary of these Commission papers is included as a third enclosure to SECY-10-0165.)

Stakeholder Input and Agreement State Views

Stakeholders have commented on issues pertaining to Part 61 in connection with staff activities related to the disposition of depleted uranium and the blending of LLW. Some of these comments include specific recommendations on how the rule could be amended to address a key issue concerning the management of emerging yet unevaluated commercial LLW streams within the Part 61 regulatory framework. (A summary of recommendations received thus far can be found in the second enclosure to SECY-10-0165.) Staff notes that some of these recommendations will be addressed by the on-going rulemaking to introduce specific regulatory requirements for a performance assessment and an intruder analysis to the existing Part 61 rule. Other recommendations, according to staff, would be addressed in connection with any future LLW rulemaking, as appropriate.

The Agreement States were notified of the staff's intention to prepare the SECY paper during the Office of Federal & State Materials & Environmental Management Programs (FSME) monthly telephone call in October 2010. Subsequently, separate telephone calls were conducted with representatives of the states of Washington, South Carolina, Texas, and Utah. During these calls, state representatives posed the following questions:

1. Is there a nexus between any of the potential actions contemplated by this Commission Paper and the on-going rulemaking to introduce specific regulatory requirements for a performance assessment and an intruder analysis to the existing Part 61 rule?

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2. Had the staff decided on the duration of the period of performance for any performance assessment?
3. Would the staff consider extending the current 100-year institutional control period to some longer, more realistic timeframe on the order of about 300 years?
4. Should there be a new regulatory provision concerning the use of engineered barriers? If so, any such requirement should be technology neutral and any implementation decisions should be deferred to the licensee.
5. How would any revised commercial LLW regulation be applied? That is to say, would it apply to currently operating LLW facilities or, alternatively, would it be applied to only new licensees?
6. How will the staff engage the Agreement States and other interested stakeholders as part of any public outreach effort in connection with any Part 61 rulemaking? (Due to budgetary constraints, some Agreement State representatives may not be able to attend planned public meetings. Web-casting could help to remedy this concern, especially for those states subject to resource limitations. It might also be advisable to independently consult with those Agreement States with operating disposal sites before seeking broader stakeholder input.)
7. Should there be any changes to the waste classification tables found in § 6.155(a), the staff should factor in the large quantities of depleted uranium currently available for disposal as well as the progeny present in the uranium decay chain such as radon gas from radium-226. The staff should also consider other longer-lived radionuclides that are currently present in LLW streams in any analysis. Following any such review, the staff should determine whether it is appropriate to establish concentration/quantity limits for these long-lived isotopes in the Part 61 regulation.

SECY-10-0165 states that “The staff will engage the Agreement States, as well as other interested stakeholders on these and other issues, as part of the planned public workshops.”

Path Forward

Staff plans to discuss the proposed RI/PB options with stakeholders as part of any public outreach effort. After completing public workshops and reviewing information submitted by stakeholders, staff plans to submit a notation-vote paper to the Commission summarizing suggestions for revising Part 61 and recommending an option for Commission consideration.

Staff estimates that it will submit this notation-vote paper in 2012.

Background

On December 27, 1982, NRC published Part 61 in the *Federal Register* (47 *Federal Register* 57,446). The regulations establish the agency’s licensing requirements for LLW disposal in near-surface (approximately the uppermost 30 meters/100 feet) facilities. The rule applies to any near-surface LLW disposal technology—including shallow-land burial and engineered land disposal methods (i.e., below-ground vaults, earth-mounded concrete bunkers, and augered holes). The regulations emphasize an integrated systems approach to commercial LLW disposal—including site selection, disposal facility design and operation, minimum waste form requirements, and disposal facility closure. They also emphasize passive rather than active systems to limit and retard releases to the environment.

In developing Part 61, NRC used various assumptions as to the types of wastes likely to go into a commercial LLW disposal facility based on a survey of existing generators. The survey—which is documented in Chapter 3 of NUREG-782 [the draft Part 61 environmental impact statement (DEIS)]—concluded that there were about 36 distinct commercial waste streams consisting of approximately 24 radionuclides of potential regulatory interest. The survey did not

consider waste streams associated with the U.S. Department of Energy's nuclear defense complex since, at the time, NRC expected that disposal of those wastes would be conducted at the DOE-operated sites.

In the past few years, however, a number of developments have called into question some of the key assumptions used in the earlier Part 61 DEIS. These developments include: the emergence of potential LLW streams that were not considered in the original Part 61 rulemaking such as large quantities of depleted uranium, blended LLW, and possibly incidental wastes associated with the commercial reprocessing of spent nuclear fuel; the increased use of commercial facilities by DOE for the disposal of defense-related LLW streams; and, extensive international operational experience in the management of LLW and intermediate-level radioactive wastes that did not exist at the time that Part 61 was promulgated.

In SRM M100617B, the Commission directed the staff to outline its approach to initiate activities in connection with a possible revision to Part 61 that is RI/PB. According to SECY-10-0165, if staff undertakes a revision of Part 61, it plans to consider the above-identified developments. Moreover, staff also plans to take into account any amendments that may be made to Waste Management Order 435.1—which governs DOE's management of waste from the nation's defense programs. DOE is currently undertaking a comprehensive revision to Order 435.1, which has been in place for approximately 10 years and places a heavy emphasis on performance assessment as part of its radioactive waste management decision-making. DOE plans to complete this comprehensive revision sometime in 2011.

For additional information, please contact Michael Lee of the NRC's Office of Federal & State Materials & Environmental Management, Division of Waste Management and Environmental Protection (FSME/DWMEP), at (301) 415-6887. You may also contact Donald

Lowman, also of FSME/DWMEP, at (301) 415-5452.

NRC Issues FR Notice re Concentration Averaging

On January 26, 2011, the U.S. Nuclear Regulatory Commission issued a *Federal Register* notice announcing that the agency would hold a public meeting to solicit input on issues associated with revising the Branch Technical Position (BTP) on Concentration Averaging and Encapsulation (CA BTP). The meeting—which was held on February 24, 2011—took place at the Legacy Hotel at 1775 Rockville Pike in Rockville, Maryland 20852.

In addition, the agency will accept written comments on the issues and questions presented in the *Federal Register* notice. Comments should be postmarked no later than April 25, 2011.

A copy of the Federal Register notice may be obtained at <http://frwebgate1.access.gpo.gov/cgi-bin/PDFgate.cgi?WAISdocID=H39Gsl/0/2/0&WAISaction=retrieve>.

An agenda for the February 24 meeting is available on NRC's electronic public workshop schedule at <http://www.nrc.gov/public-involve/public-meetings/index.cfm>.

Summary

In 2007, NRC ranked revising the BTP as a high priority when the agency conducted its strategic assessment of its low-level radioactive waste regulatory program (SECY-07-0180). Since that time, the agency has focused its efforts on the blending of low-level radioactive waste—one of eight major areas in the CA BTP.

In SECY-10-0043, NRC staff provided the Commission with an analysis of issues related to the blending of low-level radioactive waste. In the associated Staff Requirements Memorandum

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(SRM), the Commission directed staff to revise the blending position in the CA BTP to be risk-informed and performance-based.

With this decision, staff believes it is in the position to update the entire CA BTP, rather than only addressing blending. The update will also include the remainder of the CA BTP topics that address mathematical averaging of radioactivity concentrations.

During the February 24 meeting, staff sought to obtain comments from stakeholders on how the CA BTP could be revised to be more aligned with the NRC's position of risk-informed, performance-based regulations. Written comments postmarked by April 25 will also be accepted by the agency. The agency may consider comments received after this date "if it is practical to do so."

NRC will consider the stakeholder comments and views as it develops a revised draft CA BTP. Staff expects to issue a draft for public comment later this year.

Previous Comments and Preliminary Draft CA BTP

In 2009, the Electric Power Research Institute (EPRI) sent a report to the NRC entitled, "Proposed Modification to the NRC Branch Technical Position on Concentration Averaging and Encapsulation." NRC staff has no comments at this time on the EPRI report, which provided comments on the CA BTP. Instead, staff plans to consider it along with all other comments received from stakeholders in developing a revised draft of the CA BTP. NRC did note, however, that the revisions suggested in the EPRI report were likely to be discussed in the February 24 workshop.

As a first step in revising the CA BTP, NRC staff has prepared a preliminary draft for review by stakeholders. The draft, which is intended to serve as a starting point in NRC's efforts to revise the document, does not revise the basic positions in the CA BTP to make them more risk-informed. Instead, it clarifies language, defines terms, and is

reorganized so that stakeholders can more efficiently review the document.

The official CA BTP is available in the Agencywide Documents Access and Management System (ADAMS) under ML033630732. The preliminary draft revised CA BTP is available in ADAMS under ML103430088. The EPRI report is available in ADAMS under ML090230211 and ML090230195.

Questions Related to BTP

The *Federal Register* notice includes a list of questions associated with revisiting the CA BTP. "The questions are not meant to be a complete or final list, but are intended to initiate discussion," states the notice. "These questions will help focus the discussion at the public meeting."

The listed questions are as follows:

1. NUREG-1854, "NRC Staff Guidance for Activities Related to U.S. Department of Energy Waste Determinations—Draft Final Report for Interim Use," issued August 2007, contains extensive guidance for site-specific evaluations of intruder protection. The approach in the NUREG was endorsed by NRC's Advisory Committee on Nuclear Waste and Materials, which also recommended that the staff evaluate a broader application of the new concentration averaging methodology to wastes other than "waste incidental to reprocessing." How could approaches in that guidance be used in revisiting the CA BTP?

2. Part 61 limits the disposal of Cs-137 to 4,600 Ci/m³, yet the CA BTP guidance for disposal of discrete Cs-137 sources recommends a limit of 30 Ci in 0.2m³ (150 Ci/m³). Given the large disparity between the CA BTP guidance and Part 61, and given the need to dispose of large Cs-137 sources, should NRC consider revising the 30Ci in 0.2 m³ recommendation found in the CA BTP?

3. The rulemaking for unique waste streams (see SECY-08-0147 and the SRM-SECY-08-0147) will protect the inadvertent intruder by requiring a

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site- and waste-specific assessment. The current CA BTP defines acceptable practices for applying the 61.55 tables, to insure that inadvertent human intruder is protected (as intended in the draft and final Environmental Impact Statement for Part 61). Given the NRC's move towards site- and waste-specific analyses to demonstrate protection of the intruder—is the CA BTP necessary, or could it be eliminated?

4. The volume over which waste concentrations are averaged has a significant effect on waste classification. The current CA BTP addresses averaging over a waste package. Others have suggested that averaging occur over the volume of waste that an inadvertent intruder would be exposed to, or the volume of a disposal trench. What are the pros and cons of these approaches?

5. For blending homogeneous waste types, the NRC will be requiring a site- and waste-specific intruder analysis, so as to be risk-informed and performance-based. In requiring a site- and waste-specific analysis for homogeneous waste types, the NRC is moving away from the CA BTP's "factor of 10 rule" for individual contributors to a mixture of homogeneous waste types. Should NRC also move away from the "factor of 10 rule" for non-primary gamma emitters and away from the "factor of 1.5 rule" for primary gamma emitters?

6. What limits on the types of LLW that can be blended should be specified in the CA BTP? Specifically, should blending of cartridge filters and sealed sources to form homogeneous mixtures be addressed in the CA BTP?

7. In the Commission's October 13, 2010 decision on LLRW blending, it is stated that "*** [Greater than Class C] GTCC waste is a Federal responsibility and *** should not be made into a State responsibility, even if the waste has been blended into a lower classification." What unique guidance will GTCC waste require in the BTP, given this direction? For example, when should

waste be classified? (Waste is currently not required to be classified until it is shipped for disposal.)

8. How should NRC consider heterogeneity in waste concentrations in the site-specific intruder analysis? Does there need to be guidance on how to interpret intruder analysis results with respect to waste heterogeneity?

9. 10 CFR Part 61.55(a)(8) allows for averaging of waste concentrations in determining the classification of waste. Such averaging should continue to protect inadvertent intruder in a waste disposal facility, one of the four performance objectives in 10 CFR Part 61.

- How do other programs for managing and disposing of waste treat protection of an inadvertent intruder?
- Do they allow for averaging, and if so, what are the constraints?
- Could or should NRC harmonize its approach with these other programs? If so, would changes need to be made to NRC regulations, or could they be made in guidance?

Submitting Comments

Interested stakeholders that plan to submit comments on issues associated with revisiting the CA BTP should include Docket ID NRC-2011-0022 in the subject line. Comments submitted in writing or in electronic form would be posted on the NRC web site and on the federal rulemaking web site at regulations.gov. Interested stakeholders are cautioned that the comments will not be edited to remove any identifying or contact information.

Comments may be submitted using the federal rulemaking website by going to <http://www.regulations.gov> and searching for documents filed under Docket ID NRC-2011-0022.

Comments may also be submitted via mail addressed to:

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Cindy Bladey
Chief
Rules, Announcements and Directives Branch
(RADB)
Division of Administrative Services
Office of Administration
Mail Stop: TWB-05-B01M
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Comments may be submitted via facsimile to RADB at (301) 492-3446.

Background Information

NRC requires that radioactive waste proposed for near-surface disposal must be classified, based on its hazard to the intruder, in order to protect individuals from inadvertent intrusion into a waste disposal facility. "Licensing Requirements for Land Disposal of Radioactive Waste," 10 CFR Part 61, establishes a waste classification system based on the classification of specific radionuclides contained in the waste. 10 CFR 61.55(a)(8) states in part that "The concentration of a radionuclide [in waste] may be averaged over the volume of the waste, or weight of the waste if the units [on the volumes tabulated in the concentration tables] are expressed as nanocuries per gram."

In May 1983, NRC initially developed a technical position on radioactive waste classification as contained in ADAMS at ML033630755. That technical position paper described overall procedures acceptable to NRC staff that could be used by licensees to determine the presence and concentrations of the radionuclides listed in 10 CFR 61.55, and thereby classify waste for near-surface disposal.

NRC published the CA BTP in 1995, expanding and further defining section C.3 of the 1983 BTP dealing with concentration averaging. As part of its 2007 strategic assessment of the low-level radioactive waste program, NRC staff informed

the Commission of its plans to update the CA BTP. (See SECY-07-0180.) Staff classified the planned revision, which would incorporate risk-informed approaches, as a high-priority task. Subsequently, in 2010, staff responded to a request from the Commission to provide options for the agency's policy on blending—one of eight topic areas in the CA BTP. (See SECY-10-0043.)

The Commission ultimately adopted the staff's recommendation to revise the blending position contained in the CA BTP to be risk-informed and performance-based. "With this direction from the Commission," states the *Federal Register* notice, "the staff is initiating revisions to the entire CA BTP to include the Commission's new position on blending, as well as to consider risk-informed, performance-based approaches for the remainder of the CA BTP."

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

NRC Opens Registration for Regulatory Information Conference

March 8-10, 2011 in Bethesda, Maryland

The U.S. Nuclear Regulatory Commission will hold its 23rd annual Regulatory Information Conference (RIC) in Bethesda, Maryland from March 8-10, 2011. The conference—which will be held at the Bethesda North Marriott Hotel at 5701 Marinelli Road—will include a low-level radioactive waste panel.

More than 3,000 people are expected to attend the conference—including representatives from more than 30 foreign countries, representatives from all levels of the government and a broad range of stakeholders. The conference is intended to bring together NRC staff, nuclear plant owners, nuclear materials users, key industry stakeholders, representatives from all levels of government, international regulators, special interest groups and the public to discuss key issues affecting the safety and security of commercial nuclear facilities and current regulatory activities.

"The annual Regulatory Information Conference provides an excellent opportunity for stakeholders and interested members of the public to learn more about the NRC's safety, security and environmental protection activities," said NRC Chairman Gregory Jackzo. "In addition to conveying important research findings, rulemaking information, and regulatory improvements, we also will be providing ample opportunity for discussion and feedback. I encourage members of the public who are interested in nuclear regulation to attend the RIC and participate in this important forum."

At this year's program, Chairman Jaczko will be featured as the keynote speaker. Additional program highlights will include plenary sessions with Commissioners Kristine Svinicki, George

Apostolakis, William Magwood IV, and William Ostendorff. The RIC plenary sessions will also include remarks by Bill Borchardt, NRC's Executive Director for Operations. Special plenary sessions are also scheduled with Martin Virgilio, Deputy Executive Director for Reactor and Preparedness Programs; Eric Leeds, Director of the Office of Nuclear Reactor Regulation; and, various industry officials. Topics at this year's RIC will include domestic and international issues associated with operating reactors; new and advanced reactors; fuel cycle facilities; nuclear security; safety research; safety culture; and, NRC budgeting and fees management improvements.

The NRC's Offices of Nuclear Reactor Regulation and Nuclear Regulatory Research are jointly hosting the RIC. It is free and open to the public, although registration is required. Early registration is encouraged; however, onsite registration will also be available during the conference. The full RIC agenda offers tours of the NRC's Incident Response Center and a broad variety of poster and tabletop presentations.

To register for RIC and obtain a copy of the conference agenda, please go to <http://www.nrc.gov> and click on the RIC button.

National Academy of Sciences (NAS)

NAS Announces Expert Nominees for First Phase of Cancer Risk Study

On January 11, 2011, the National Academy of Sciences (NAS) named the provisional committee nominees for the first phase of the NRC-sponsored study, "Analysis of Cancer Risks in Populations Near Nuclear Power Facilities." NAS then accepted comments regarding

individual committee members or committee composition until the 31st of January. Once NAS analyzes the committee's composition and balance, as well as potential conflicts of interest, the Academy will finalize the committee.

The NAS project will provide an up-to-date version of the 1990 U.S. National Institutes of Health – National Cancer Institute (NCI) report, “Cancer in Populations Living Near Nuclear Facilities”—which can be found at <http://www.cancer.gov/cancertopics/factsheet/Risk/nuclear-facilities>. NRC uses the 1990 NCI report as a primary resource when communicating with the public about cancer mortality risk in counties that contain or are adjacent to nuclear power facilities. In the new study, NRC is interested in having NAS evaluate cancer diagnosis rates, in addition to mortality risk, for populations living near decommissioned, operating and proposed NRC-licensed nuclear facilities.

NAS is a non-governmental organization chartered by the U.S. Congress to advise the nation on issues of science, technology, and medicine. Through the National Research Council and Institute of Medicine, NAS carries out studies independently of the government using processes designed to promote transparency, objectivity, and technical rigor.

The provisional NAS committee list has been posted on the Academy's web site at <http://www8.nationalacademies.org/cp/CommitteeView.aspx?key=49310>. General information on this project can be found at <http://www.nationalacademies.org/cancerriskstudy>.

ABWR Design Certification Renewal Applications Available

On January 28, 2011, the U.S. Nuclear Regulatory Commission announced that an application from GE-Hitachi Nuclear Energy requesting a 15-year renewal of the design certification for the Advanced Boiling Water Reactor (ABWR) is available for public review. GE-Hitachi submitted the renewal application on December 7, 2010. NRC staff is currently conducting an initial check of the application to determine whether it contains enough information for the required formal review. If the application has sufficient information, NRC will formally “doCKET,” or file, the application.

A month earlier, on December 22, 2010, NRC accepted Toshiba Corporation's application requesting a 15-year renewal of the ABWR design-certification. NRC established docket number 52-044 for the application, which was submitted by Toshiba on November 2, 2010. Docketing the application does not indicate whether the Commission will approve or reject the request.

NRC certified the ABWR in 1997 as being acceptable for use in the United States. A design certification is valid for 15 years and can be renewed for an additional 10 to 15 years.

GE-Hitachi's renewal application may be found at <http://www.nrc.gov/reactors/new-reactors/design-cert.html>. For additional information, please contact project manager Adrian Muniz at (301) 415-4093 or at Adrian.Muniz@nrc.gov.

Toshiba's renewal application may be found at <http://www.nrc.gov/reactors/new-reactors/design-cert/renewal-abwr.html>. For additional information, please contact project manager David Misenhimer at (301) 415-6590 or at David.Misenhimer@nrc.gov.

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

ASLB to Hear Oral Argument re North Anna COL Application

On March 3, 2011, an Atomic Safety and Licensing Board (ASLB) panel is scheduled to conduct oral argument in Louisa, Virginia regarding the application for a new reactor at the North Anna site. The session is open for public observation, but participation will be limited to the parties admitted to the proceeding—the Blue Ridge Environmental Defense League (BREDL), applicant Dominion, and NRC staff.

Dominion submitted a Combined License (COL) application to the NRC on November 26, 2007. The application seeks permission to build and operate a new nuclear reactor at the North Anna site, which is located approximately 40 miles northwest of Richmond. Dominion revised the application in June 2010 to reflect a change in the proposed reactor design. BREDL has submitted objections, or contentions, against Dominion's revised application. The ASLB panel will question the parties regarding whether BREDL's new contentions can be resolved under the NRC's jurisdiction.

The ASLB is an independent body within the NRC that presides over hearings where the public can challenge proposed licensing and enforcement actions.

Documents related to the North Anna COL application are available at <http://www.nrc.gov/reactors/new-reactors/col/north-anna.html>. Documents pertaining to the ASLB proceeding, including BREDL's contentions, are available in the agency's Electronic Hearing Desk at <http://ehd1.nrc.gov/EHD/>.

License Renewals Continue to Move Forward

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

- ◆ On March 1, 2011, an Atomic Safety and Licensing Board (ASLB) panel conducted oral argument in Port Clinton, Ohio regarding FirstEnergy's application to renew the operating license for the Davis-Besse nuclear power plant near Oak Harbor, Ohio. The session was open for public observation, but participation was limited to designated representatives of the groups seeking admittance to the proceeding (Beyond Nuclear, Citizens Environment Alliance of Southwestern Ontario, Don't Waste Michigan and the Green Party of Ohio), counsel for FirstEnergy and NRC staff. FirstEnergy submitted the renewal application to the NRC on August 27, 2010. The current expiration date for the plant is April 22, 2017. *Documents related to the Davis-Besse license renewal application are available at <http://www.nrc.gov/reactors/operating/licensing/renewal/applications/davis-besse.html>.*
- ◆ On January 13, 2011, NRC staff issued its final safety evaluation report (SER) for the proposed renewal of the operating licenses for the Palo Verde Nuclear Generating Station's Units 1, 2 and 3 in Maricopa County, Arizona. The report concluded that there are no open safety items that would preclude license renewal for an additional 20 years of operation. The results of the report show that the applicant has identified actions that have been or will be taken to manage the effects of aging in appropriate systems, structures and components of the plant, and that their functions will be maintained during the period of extended operation. Arizona Public

Service Company (APS) submitted the application in December 2008. The current operating licenses for Palo Verde's Units 1, 2 and 3 expire on June 1, 2025; April 24, 2026; and November 25, 2027, respectively. *The SER is available at <http://www.nrc.gov/reactors/operating/licensing/renewal/applications/palo-verde.html>.*

- ◆ On January 13, 2011, NRC announced the opportunity to request a hearing on an application for a 20-year renewal of the operating licenses for South Texas Project (STP) Units 1 and 2. STP Units 1 and 2 are both pressurized-water nuclear reactors, located 12 miles southeast of Bay City, Texas. The plant's current operating licenses for Units 1 and 2 will expire on August 20, 2027 and on December 15, 2028, respectively. The licensee, STP Nuclear Operating Company, submitted the renewal application on October 26. NRC staff has determined that the application contains sufficient information for the agency to formally "docket," or file, the application. *The STP application is available for review at <http://www.nrc.gov/reactors/operating/licensing/renewal/applications/south-texas-project.html>.*
- ◆ On January 11, 2011, NRC staff issued an SER with open items for the proposed renewal of the operating licenses for Diablo Canyon Nuclear Power Plant, Units 1 and 2. The SER documents the results of NRC staff's review of the license renewal application and site audit of Diablo Canyon's aging management programs to address the safety of plant operations during the period of extended operation. Pacific Gas & Electric Company (PG&E) submitted the application in November 2009. The current operating licenses for the plant—which is located in Avila Beach, California—are due to expire on November 2, 2024 and August 26, 2025. *The SER is available at <http://www.nrc.gov/reading-rm/adams.html> using accession number ML110100796.*

- ◆ On December 16, 2010, NRC renewed the operating license for the Duane Arnold Energy Center for an additional 20 years. The new license for Duane Arnold—which is located in Palo, Iowa—will expire on February 21, 2034. The decision to renew the license came after thorough safety and environmental reviews of the application, including the holding of various public meetings. FPL Energy Duane Arnold submitted the renewal application October 1, 2008. *Documents related to the Duane Arnold renewal application, including the safety and environmental review reports, can be found online at <http://www.nrc.gov/reactors/operating/licensing/renewal.applications/duane-arnold-energy-center.html>.*

Under NRC regulations, a nuclear power plant's original operating license may last up to 40 years. License renewal may then be granted for up to an additional 20 years, if NRC requirements are met. To date, NRC has approved license extension requests for 61 reactor units. In addition, NRC is currently processing license renewal requests for several other reactors.

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

Aging Management Document Updated re Reactor License Renewal Requests

In December 2010, the U.S. Nuclear Regulatory Commission issued the second revision of its Generic Aging Lessons Learned (GALL) Report—a key document in the agency's process for reviewing applications to renew reactor

operating licenses. The report—which catalogs the structures and components found in a nuclear power plant—contains a matrix of materials and environments, as well as aging effects and mechanisms, which is used by NRC staff to judge whether a plant’s aging management program is acceptable.

The report’s revisions stem from lessons learned since the first revision in 2005. Updates were made to all of the existing aging management programs. Several new aging management programs were added to the report, including a new program covering buried pipes and tanks.

NRC staff asked for public input during the revision process, and considered these comments in the final report. As part of this process, NRC also revised the Standard Review Plan it uses for license renewal applications based on the GALL report revisions and lessons learned during previous license renewals.

The revised GALL report is available at <http://www.nrc.gov/reading-rm/adams/web-based.html> by entering accession number ML103490041. For additional information on the schedule and background on guidance, please go to <http://www.nrc.gov/reactors/operating/licensing/renewal/guidance/updated-guidance.html>.

NRC Unveils External Blog to Enhance Public Dialogue

On January 31, 2011, the U.S. Nuclear Regulatory Commission unveiled its first-ever external blog on the third-party site WordPress. The blog, which is intended to enhance communication with the public and support Open Government, features posts from staff members throughout the agency writing about various topics of interest to the public.

“We are excited about using this new communication tool and hope it will increase our collaboration and interaction with the public,” said Chairman Gregory Jaczko. “The blog is intended to build upon our extensive efforts to explain and clarify the actions, roles and responsibilities of the NRC, raise awareness about our agency and its mission, and – most importantly – give us an opportunity to hear from the public.”

The new blog does not replace formal communications, such as *Federal Register* notices or meeting notices, and will not accept allegations or comments on rulemakings. The complete comment guidelines are available on the blog.

To reach the blog directly, please go to <http://public-blog.nrc-gateway.gov>. You may also go to the NRC web site at www.nrc.gov and click on the blog icon.

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Austin, Texas on December 9, 2010. (See *LLW Notes*, November/December 2010, pp. 15-20.)

There was a thirty-day period provided during which interested stakeholders could provide comment on the proposed rules—either postmarked or e-mailed by midnight on December 26, 2010. This latest thirty-day comment period was in addition to a previous sixty-day comment period, two stakeholder meetings, two public hearings and public testimony during four public meetings.

A copy of the proposed rules, hearing agenda and other related information may be found on the Commission’s web site via a direct link at <http://www.tllrwdcc.org/rule675.html>.

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.

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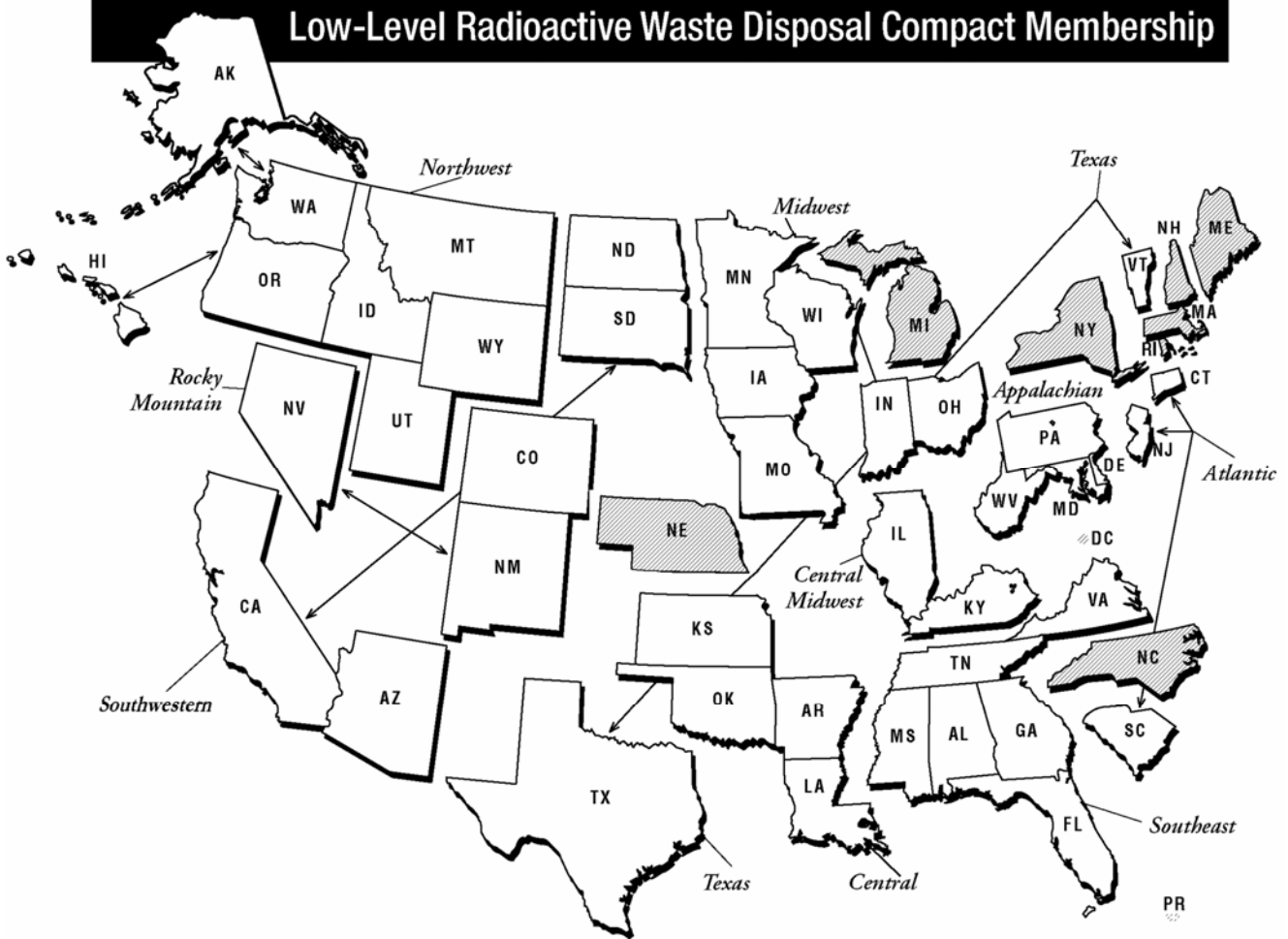
To access a variety of documents through numerous links, visit the web site for the LLW Forum, Inc. at www.llwforum.org

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

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

Low-Level Radioactive Waste Disposal Compact Membership



Appalachian Compact

Delaware
Maryland
Pennsylvania
West Virginia

Atlantic Compact

Connecticut
New Jersey
South Carolina

Central Compact

Arkansas
Kansas
Louisiana
Oklahoma

Central Midwest Compact

Illinois
Kentucky

Northwest Compact

Alaska
Hawaii
Idaho
Montana
Oregon
Utah
Washington
Wyoming

Midwest Compact

Indiana
Iowa
Minnesota
Missouri
Ohio
Wisconsin

Rocky Mountain Compact

Colorado
Nevada
New Mexico

Northwest accepts Rocky Mountain waste as agreed between compacts

Southeast Compact

Alabama
Florida
Georgia
Mississippi
Tennessee
Virginia

Southwestern Compact

Arizona
California
North Dakota
South Dakota

Texas Compact

Texas
Vermont

Unaffiliated States

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