

# LLW *notes*

Volume 18, Number 5 September/October 2003

## NAS Releases Interim Report on Low Activity Wastes

On October 14, the National Research Council of the National Academies released an Interim Report on Current Regulations, Inventories and Practices for its study on Improving the Regulation and Management of Low-Activity Radioactive Wastes. The study, which is being conducted by a 15-member committee of the Board on Radioactive Waste Management, is being conducted in phases due to funding constraints. To date, the study has received financial support from the following five entities: Army Corps of Engineers, Department of Energy, Environmental Protection Agency, Nuclear Regulatory Commission, and Southeast Compact Commission.

*For additional background information on the study - including policy issues, technical information, and statement of task - see LLW Notes, January/February 2002, pp. 1, 9 - 10.*

### **Categorization of the Wastes to be Addressed in the Study**

In the interim report, the committee initially set out "to develop a concise list of categories that would include low-activity wastes from essentially all sources, yet by focusing on their inherent radiological properties rather than their origins, emphasize gaps and inconsistencies between their current regulation and management and their actual radiological hazards." Accordingly, the committee

came up with the following categorization:

- ◆ Wastes containing types and quantities of radioactive materials that fall well within the Nuclear Regulatory Commission (US NRC) classification system for low-level waste, e.g., Class A, B, and C . . . These include wastes from nuclear utilities, other industries, medicine, and research, which are disposed in USNRC-licensed, commercially operated facilities ("commercial low-level waste"), and similar wastes produced and disposed at Department of Energy (DOE) sites ("defense low-level waste").
- ◆ Slightly radioactive solid materials—debris, rubble, and contaminated soils from nuclear facility decommissioning and site cleanup. They arise in very large volumes but produce very low or practically undetectable levels of radiation. They fall at the very bottom of US NRC Class A (the lowest of the classes).

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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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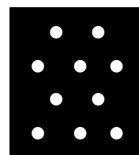
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## Key to Abbreviations

U.S. Department of Energy.....DOE  
U.S. Department of Transportation.....DOT  
U.S. Environmental Protection Agency.....EPA  
U.S. General Accounting 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

## September 2003 LLW Forum Meeting Held in Oak Brook, Illinois

### March 2004 LLW Forum Meeting to be Held in Seattle, Washington

The fall 2003 meeting of the Low-Level Radioactive Waste Forum, Inc. was held on September 22-23 in Oak Brook, Illinois. The meeting, which was sponsored by the State of Illinois, was held at the McDonald's Campus at the Hyatt Lodge. A meeting of the Executive Committee took place on Monday morning, September 22, just prior to the regularly scheduled meeting.

#### Agenda

During the course of the meeting, attendees heard many interesting presentations and discussed recent developments in the field of low-level radioactive waste management and disposal. Presentations were made on the following topics, amongst others, during the course of the meeting:

- ◆ new developments in states, compacts, federal agencies, and industry;
- ◆ new legislation in Texas for the siting and development of a disposal facility—including the process and timeline for operator and site selection;
- ◆ current status of Nuclear Regulatory Commission's rulemaking on the recycling or release of solid materials;
- ◆ Department of Defense's new policy memorandum on compliance with compact procedures and requirements;
- ◆ development of a national tracking system for materials of concern;
- ◆ status update on the Environmental Protection Agency's advanced notice of proposed rulemaking on alternative disposal options for low-activity and mixed low-level radioactive waste;

- ◆ updates on the status of the Envirocare, Waste Control Specialists, and Barnwell facilities;
- ◆ vision 2020—an industry perspective on the future of nuclear generation; and
- ◆ status update on the Private Fuel Storage proposed facility for spent fuel.

During the course of the meeting, LLW Forum members agreed to participate in a survey of projected future disposal data for a study update that is being conducted by the U.S. General Accounting Office. In addition, members were informed about a presentation that will be made by LLW Forum representatives at the 2004 Waste Management Conference in Tucson, Arizona. Members also received status updates on the Manifest Information Management System Working Group and the brokers and processors directory project.

In addition, meeting attendees had the opportunity to tour State of Illinois' emergency response vehicles and equipment. The State of Illinois also hosted a reception for meeting attendees.

#### Next Meeting

The next meeting of the Low-Level Radioactive Waste Forum will be held in Seattle, Washington from March 15 – 16, 2004. The meeting, which is being arranged by the Northwest Interstate Compact for Low-Level Radioactive Waste Management and the State of Washington, will be held at the Red Lion Inn. Registration materials and a meeting bulletin will be available shortly on the LLW Forum's website at [www.llwforum.org](http://www.llwforum.org).

*For additional information, please contact Todd D. Lovinger, Executive Director of the LLW Forum, at (202) 265-7990.*

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

## **Success with Long-Term Commitments Puts Barnwell Near Capacity Limits for Out-of-Region Waste**

At the Low-Level Radioactive Waste Forum meeting in Oak Brook, Illinois in September, a representative from the South Carolina Budget and Control Board announced that the state has been so successful at signing up out-of-region generators for long-term commitments that there is only 14,646 cubic feet of uncommitted space left for out-of-region generators through 2008 - the year when Barnwell is scheduled to close its doors to out-of-region generators. As a result, the state is sending letters to all generators advising them that the state is no longer entering into long-term commitments for disposal.

According to the letter, volume projections by customers who have not entered into long-term commitment agreements with South Carolina indicate "that there is considerably more need for disposal volume" than the Budget and Control Board is able to accommodate under state law. The letter goes on to state that, "Because of the high demand for the small amount of remaining uncommitted disposal space this fiscal year and next fiscal year, it is now necessary to limit the acceptance of additional waste from customers outside the Atlantic Compact region who have not previously entered into disposal agreements with . . . [the State Budget and Control Board]." The letter does note, however, that generators may be placed on a waiting list by contacting George Antonucci, Director of Disposal Services and Special Projects at Chem-Nuclear.

Due to the limited amount of space remaining available to out-of-region generators at Barnwell, Chem-Nuclear revised its acceptance policy in late

September. In the past, a generator without committed space would automatically receive authorization to dispose of waste at the facility with 3 days notice. This is no longer the case.

The letter explains this, as follows:

"We are in the process of determining policy that will maximize the use of remaining uncommitted space in the best interest of the citizens of South Carolina. Until our new policy is determined, it may be necessary to withhold clearance for shipments to Barnwell from nonregional generators without such agreements."

"Decisions by our agency to authorize individual shipments will depend generally on the most current information regarding type and characteristics of the waste, volume involved, shipment schedule, and other factors . . . As a general rule, small-volume irradiated hardware shipments will most likely be approved for highest priority shipment. Other shipments that will result in highest revenues for the State will also receive priority consideration."

At the September 2003 LLW Forum meeting, Antonucci cautioned attendees that additional space may become available based on several factors including Chem-Nuclear's ability to store waste on site and the potential for Atlantic Compact generators to postpone disposal of their waste until after 2008, thereby freeing up more space for out-of-region generators while the facility remains open to them.

By law, the Barnwell facility may not accept out-of-region waste after 2008. In the interim, the law places a cap on the amount of out-of-region waste that may be accepted at the facility. The cap is reduced each year.

*For additional information, contact Bill Newberry, Manager of the Radioactive Waste Disposal Program for the South Carolina Budget and Control Board, at (803) 737-8037 or George Antonucci at (803) 758-1807.*

### **Budget and Control Board Gets New Web Address: Seeks Volume Estimates**

The South Carolina Budget and Control Board, which regulates the Barnwell low-level radioactive waste disposal facility, has a new website address. The new address is

[www.barnwelldisposal.com](http://www.barnwelldisposal.com)

On October 28, the following notice was placed on the site by William Newberry, Manager of the Budget and Control Board's Radioactive Waste Disposal Program:

Due to the annual volume limit in South Carolina law, the Barnwell site is not currently able to provide pre-notification approval for shipments, except for requests from Atlantic Compact generators and generators who have previously entered into agreements with the state for access to the site.

Customers outside the Atlantic Compact region who do not have access agreements may contact George Antonucci at Chem-Nuclear (803-256-0450) to have specific shipments placed on the waiting list. Requests on the waiting list may be approved as circumstances permit.

Utilities and other large generators who have not previously provided Barnwell volume disposal estimates through 2008 are encouraged to provide us such projections by e-mail. These projections should identify how much of the volume are resins or resin-derived wastes. The projections should also indicate how much of the waste is expected to be shipped through a broker or processor and how much is expected to be shipped directly.

Waste brokers or processors who believe they have "stranded waste," which is waste that was on-site on September 25, 2003, that cannot be shipped to a disposal facility other than Barnwell, should contact . . . [Bill Newberry] at 803-737-8037.

### ***Northwest Compact/State of Washington***

## **DOE and Washington Reach Agreement re Hanford**

In late October, the U.S. Department of Energy and the State of Washington reached an agreement resolving a rather contentious dispute over the disposal of mixed waste at the Hanford facility. The dispute erupted this past spring when DOE began shipping transuranic waste from other sites to Hanford for disposal. The Washington Department of Ecology attempted to prohibit the shipments, however, in an effort to force DOE to make specific commitments to dig up and remove an estimated 78,000 barrels of transuranic waste buried at Hanford. DOE refused to provide the requested commitments and state officials filed suit. In addition, state officials invoked their enforcement authority under a legally binding cleanup agreement to order the department to file plans for cleanup of the buried wastes at Hanford. In response, DOE filed a lawsuit challenging the state's authority to regulate transuranic wastes—which DOE maintained are solely under the authority of federal regulators. DOE also made it known that the state's interference with future shipments could slow down the department's efforts to accelerate cleanup at other DOE sites.

In its final form, the agreement sets a series of enforceable deadlines for the department to dig up and remove thousands of barrels of transuranic and low-level radioactive waste previously buried in shallow, unlined trenches between 1970 and 1988. In the past, DOE had refused to make specific commitments on retrieval of that waste. The agreement also sets schedule requirements for DOE to begin treating mixed wastes now in above-ground storage and to properly characterize, manage

## States and Compacts *continued*

and treat mixed waste generated by cleanup operations. Under the terms of the agreement, DOE must retrieve, characterize and treat a certain amount of waste each year.

In particular, the agreement requires DOE to do the following:

- ◆ start retrieving buried transuranic and low-level waste by November 15 of this year;
- ◆ begin treating remote-handled, mixed low-level waste by 2008;
- ◆ treat the mixed low-level waste backlog currently in above-ground storage by 2009;
- ◆ retrieve all buried contact-handled transuranic and low-level waste by 2010;
- ◆ start retrieving buried remote-handled transuranic and low-level waste by 2011; and
- ◆ establish the capability to treat remote-handled, mixed transuranic waste by 2012.

Not covered by the agreement is a dispute over whether or not state regulators have the authority to require DOE to treat mixed transuranic wastes that are destined for the Waste Isolation Pilot Plant (WIPP) in New Mexico for underground disposal. The department and the state agreed, however, to seek expedited action by the courts on this matter. If the state wins the court battle, certain milestones for treatment will be put into effect.

The agreement, as written, allows both DOE and the state to maintain their legal positions on the state's authority over transuranic wastes. It simply states that both parties agree that the buried waste at Hanford needs to be cleaned up and that a schedule for such cleanup could be set.

In a statement on the issue, Jesse Roberson, Assistant Secretary for Environmental Management at the U.S. Department of Energy,

stated that “[d]espite this dispute, the cleanup of these wastes at Hanford continues to accelerate . . . Since March, we have treated approximately 750 cubic meters of mixed low-level waste, sent 37 shipments of mixed and non-mixed transuranic waste to WIPP, and have already begun to retrieve and classify buried waste.”

Keith Klein, DOE site manager at Hanford, also focused on the accomplishments of the agreement, stating as follows: “This agreement signals a return to a more cooperative and collaborative approach to the challenges presented by the cleanup of this complex site . . . We have already demonstrated our ability to address these difficult cleanup issues, and I am looking forward to working with the state and EPA to find ways to accelerate it.”

State officials also hailed the agreement as a huge success for assuring cleanup of buried wastes at the site that previously were not covered by an enforceable agreement. Linda Hoffman, interim director of the State of Washington's Department of Ecology called the agreement a “tremendous win for Hanford and the people of Washington.”

***Southeast Compact***

## **Southeast Compact Commission Announces the 1<sup>st</sup> Richard S. Hodes, M.D. Honor Lecture Award**

On October 1, the Southeast Compact Commission for Low-Level Radioactive Waste Management announced that it has chosen W.H. "Bud" Arrowsmith as the winner of the first Richard S. Hodes, M.D. Honor Lecture Award. Mr. Arrowsmith currently serves as the Vice President of Marketing and Sales for RWE NUKEM Corporation. He was the founder and served as President and CEO of the Scientific Ecology Group which, with Mr. Arrowsmith's guidance, developed and implemented numerous technical innovations in the field of radioactive waste management including compaction, incineration, recycling, decontamination, and vitrification.

In announcing the award, James Setser, Chair of the Southeast Compact Commission, stated as follows:

The Commission is pleased to recognize Mr. Arrowsmith for the role he has played in solving low-level radioactive waste management problems in the United States by providing critical new technology, facilities, and resources for the nuclear industry over several decades . . . The Commission commends Mr. Arrowsmith. His excellent work in the field of low-level radioactive waste management is worthy of recognition.

The Hodes Award is presented to an individual, organization or company that contributed in a significant way to improving the technology, policy or practices of low-level radioactive waste management in this country. It will be formally presented in March 2004 during the Waste

Management Symposium in Tucson, Arizona. Following the presentation, Mr. Arrowsmith will give a lecture explaining the development of his innovations and the need for future innovations.

In addition to selecting Arrowsmith as the award winner, the Southeast Compact Commission selected the Texas A & M University Student Chapter of Advocates for Responsible Disposal in Texas (ARDT) for special recognition as an Honorable Mention in the 2003 Hodes Award program for its innovation in educational activities related to low-level radioactive waste management. "The Commission's selection committee was very impressed with the efforts of the student chapter to reach beyond their technical specialty of nuclear engineering to apply their knowledge in the policy arena," said Mr. Setser. "I applaud their participation in the legislative process and encourage them to continue this practice throughout their careers in the nuclear energy industry."

The Hodes Honor Lecture Award was established in 2003 to honor the memory of the Southeast Compact Commission's late Chair, Dr. Richard Hodes—an innovator in the fields of medicine, law, public policy, and technology and a strong proponent of innovation in the field of low-level radioactive waste management. Hodes served as Chair of the Southeast Compact Commission from its inception in 1983 until his death in 2002.



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

### **TCEQ Holds Public Meeting**

On Tuesday, September 16, the Texas Commission on Environmental Quality held a public meeting to receive comments on proposed rules for the licensing of a low-level radioactive waste disposal facility. TCEQ is revising its rules in accordance with recently enacted legislation that amends Texas Health and Safety Code provisions dealing with the siting and operation of a commercial low-level radioactive waste disposal facility for the Texas Low-Level Radioactive Waste Disposal Compact.

The hearing, which was held at TCEQ's central office in Austin, provided an opportunity for interested parties to submit written or oral comments. TCEQ staff was available to answer questions before and after the hearing, which lasted approximately 30 minutes.

During the course of the hearing, comments were provided by representatives of the Texas House of Representatives, Nuclear Waste Defense Fund, Texas Utilities, Waste Control Specialists, the League of Women Voters, and Advocates for Responsible Disposal in Texas. The following issues, among others were raised during the testimony: engineering, disposal techniques, financial assurance, public access and accountability, security, lack of limits on radioactivity, site suitability, container integrity, concurrent acceptance of federal and compact waste, license renewal, the licensing process, a resolution by Andrews County in support of the proposed facility, emergency preparedness, potential terrorist activity, transportation risks, and the need for such a facility.

The TCEQ will accept written comments from interested parties until 5 p.m. on September 22, 2003.

## **Background**

TCEQ is revising its rules that govern the regulation of a low-level radioactive waste disposal facility in accordance with recently enacted legislation. The legislation, which was signed into law by Texas Governor Rick Perry (R) in late June, amends Texas Health and Safety Code provisions dealing with the siting and operation of a commercial low-level radioactive waste disposal facility for the Texas Low-Level Radioactive Waste Disposal Compact. The final amended version of the legislation, H.B. 1567, was approved by both the Texas House and Senate in late May after a conference was concluded which reconciled differences in versions that were previously passed by both houses. (A copy of the final version of the bill as passed by both the House and Senate can be found at [http://www.capitol.state.tx.us/tlo/legislation/bill\\_status.htm](http://www.capitol.state.tx.us/tlo/legislation/bill_status.htm).)

The legislation, as approved, allows for the creation of two privately run waste disposal facilities to be licensed as one site by the TCEQ. One facility may dispose of federal facility waste, as defined under the Low-Level Radioactive Waste Policy Act of 1980 and its 1985 amendments, subject to certain specified conditions. The other, adjacent facility, may dispose of commercial low-level radioactive waste.

The proposed rule which was the subject of the September 16 TCEQ meeting will govern any facility that is built pursuant to this legislation. A stakeholder meeting to discuss the proposed rule was held on July 18, 2003, at the TCEQ offices in Austin, Texas.

Draft copies of the proposed rule can be found on the agency's website at [www.tnrcc.state.tx.us/permitting/wasteperm/stakeholdergroup/llrw.html](http://www.tnrcc.state.tx.us/permitting/wasteperm/stakeholdergroup/llrw.html).

## Tooele Planning and Zoning Commission Denies Cedar Mountain Permit Application

On September 2, the Tooele County Planning and Zoning Commission voted 6 to 1 to deny an application for a temporary conditional use permit by Cedar Mountain Environmental, which is seeking to site another low-level radioactive waste disposal facility in Tooele County, Utah. The proposal is to build a facility within Section 29, T1S, R11W of approximately 315 acres immediately north of Envirocare of Utah's low-level radioactive waste disposal facility. A portion of the proposed site, which is within the boundaries of the Tooele County Hazardous Waste Industries Zone, is currently occupied by Envirocare's earth moving contractor -- Broken Arrow. Cedar Mountain submitted a siting application to the Utah Division of Radiation Control on January 30, 2003. (See *LLW Notes*, January/February 2003, p. 9.)

Cedar Mountain's President, Charles Judd, was quoted in local press as stating that the company will appeal the decision to the county commissioners. Judd, who previously served as President and CEO of Envirocare of Utah, was also quoted as saying that he is disappointed but not surprised by the decision due to aggressive lobbying by Envirocare, which claims that there is not enough low-level radioactive waste to support both companies doing business. The decision was based, in part at least, on a finding that Cedar Mountain failed to meet its burden of proof, including showing that there is a national need for such a facility and that it would benefit Tooele County.

Even if Cedar Mountain were to win its appeal to the county commissioners, the company still has several hurdles ahead. Besides needing approval from the county and state regulators, the proposal would need to be approved by the legislature and the governor of Utah.

## *Texas Compact/State of Vermont*

## Vermont Lawmakers Vote to Seek Delay of Payments to Texas

The Vermont Legislature's Joint Fiscal Committee voted on October 3 to advise Governor James Douglas to request that Texas allow the state to delay \$12.5 million in payments for the development of a regional low-level radioactive waste disposal facility until Texas actually has permitted a site. The money—which is the first of two payments to be made—is due by November 1 under legislation recently enacted in Texas concerning the siting and licensing of the proposed facility. (See *LLW Notes*, March/April 2003, pp. 7, 16.) The state's attorney general has already advised the Governor's office that the state is liable for the payments and that, if not made, Texas could sue Vermont for the money and/or throw the state out of the compact. However, Douglas' press secretary was recently quoted as stating that the Governor's office “will make the inquiries the joint fiscal committee recommended . . . We'll ask, but we know we have to pay.”

Concern over the payment was initially raised last month by State Auditor Elizabeth Ready, who said that several conditions of the multi-state agreement had changed and who questioned whether the state should reevaluate its position. The Joint Fiscal Committee's Chair—Senate President Pro Tem Peter Welch (D)—agreed, questioning whether the payment should be made given that Texas has not to date found an acceptable site and will not give the money back if it determines that it can not do so.

Vermont joined the multi-state agreement in 1993, along with Texas and Maine, and the compact was approved by Congress in 1998. Maine withdrew from the agreement last year, however, because its only reactor shut down in 1998 and has other places to dispose of its waste.

### Companies Begin to Seek Site Approval for New Reactors

Both Exelon Corporation and Dominion Energy recently filed early site permit applications with the U.S. Nuclear Regulatory Commission that seek approval for potential new nuclear plant sites in Illinois and Virginia. The applications are intended to clear away some environmental issues that stand in the way of new reactor construction.

Exelon, a Chicago-based company, is the country's largest nuclear operator. Dominion Energy is based in Richmond, Virginia. Both companies had previously announced an intention to seek permits for sites near existing plants. Exelon's application is for a site next to the Clinton Power Station in central Illinois. Dominion's application is for a site at the North Anna Power Station, which is located 40 miles north of Richmond.

Another early site permit application is expected to be filed shortly by New Orleans-based Entergy Corporation for a site next to the company's Grand Gulf Nuclear Plant in Clairborne County, Mississippi.

The early site permits, if granted, would clear the sites for possible future use on issues related to site suitability, environmental impact and emergency planning. Construction of a new plant would not be authorized by the permits, but rather would require a separate construction permit. None of the companies filing early site permits has any immediate plans to construct a new plant.

A number of utility officials are said to be interested in building new reactors, but are concerned about the lengthy delays associated with licensing and construction.

*(Continued from page 1)*

- ◆ Discrete sources—out-of-service radiation sources and associated materials from industrial, medical, and research applications. Although defined by statute as low-level waste, they may emit high enough levels of radiation to cause acute effects in humans or serious contamination incidents. Larger sources may exceed US NRC Class C (the highest of the classes).
- ◆ Uranium or thorium ore processing wastes. These wastes have been produced in large volumes from the recovery of uranium and thorium for nuclear applications. Their radiological hazards arise not only from radioactive uranium and thorium isotopes, but also from their radioactive decay products, especially radium, which can migrate into drinking water, and radon, which is a gas.
- ◆ Naturally occurring and technologically enhanced naturally occurring radioactive materials (NORM and TENORM) wastes. These wastes arise coincidentally from the recovery of natural sources (extraction of rare earth minerals and other mining operations, oil, and gas) and water treatment. Like uranium and thorium wastes, they arise in large volumes and their radiological hazards result from uranium, thorium, and their radioactive decay products, radium and radon.

#### **Regulation of the Wastes**

The interim report points out that at least 12 federal statutes apply to low-activity wastes, including the Atomic Energy Act, the Nuclear Waste Policy Act of 1982, and the Uranium Mill Tailings Radiation Control Act (UMTRCA). Moreover, many different entities have authority to regulate these wastes, including the Nuclear Regulatory Commission, Environmental Protection Agency, Department of Energy, Department of Transportation, Formerly Utilized Sites Remedial Action Program, and the states.

As a result of the categorization of wastes, applicability of various statutes to their regulation,

*(Continued from page 11)*

and regulatory authority by various entities, the committee found that there are "gaps and inconsistencies in the current regulations for wastes with very different levels of radioactivity, volumes, and radioactive half-lives; and inconsistencies in regulating wastes that are radiologically similar to each other."

### **Specific Findings of the Committee**

The interim report contained the following four findings:

#### Finding 1: Current Statutes and Regulations for Low-Activity Radioactive Wastes Provide Adequate Authority for Protection of Workers and the Public.

Consistent with other studies by the National Academies and the National Council on Radiation Protection and Measurements, the committee found no instances where the legal and regulatory authority of federal and state agencies was inadequate to protect human health. However, the committee noted some regulatory gaps, such as that (1) some states have chosen not to exercise regulatory authority over NORM and TENORM, (2) NRC has determined not to regulate pre-1978 uranium and thorium wastes, and (3) EPA has not exercised its authority to regulate non-AEA radioactive wastes. In addition, the committee pointed out that some wastes have not been adequately controlled, such as out-of-use sealed sources, in spite of the existence of regulatory authority.

#### Finding 2: The Current System of Managing and Regulating Low-Activity Waste is Complex. It was Developed Under a Patchwork System that has Evolved Based on the Origins of the Waste.

The committee found that it received a clear message from agencies responsible for managing and regulating radioactive waste: a more consistent, simpler, performance-based and risk-informed approach to regulation is needed. Indeed, many committee members themselves had difficulty following and applying the

regulations and the NCRP found that the current waste classification systems "are not transparent or defensible" and that the "classification systems are becoming increasingly complex as additional waste streams are incorporated into the system."

#### Findings 3 and 4: Certain Categories of Low-Activity Wastes Have Not Received Consistent Regulatory Oversight and Management. Current Regulations for Low-Activity Wastes are Not Based on a Systematic Consideration of Risks.

The committee found that regulations focused on the wastes' origins have led to inconsistencies relative to their likely radiological risks. For instance, NORM and TENORM are not regulated by federal agencies, and state regulations for these wastes are inconsistent, despite that they may contain significant concentrations of radioactive materials as compared to some highly regulated waste streams.

The committee also found that current regulations generally overlook trade-offs between radiological and non-radiological risks. For instance, very large volumes of slightly contaminated soil and debris and very heavy nuclear reactor components are being transported long distances. Analysis is needed, according to the committee, of worker risks in excavating, loading, and unloading large volume wastes; risks of transportation accidents; and environmental risks and costs.

### **Next Steps**

The committee's final report will assess policy and technical options for improving the current practices for regulating and managing low-activity wastes. According to the interim report, "[t]he assessments will include risk-informed options, and the committee strongly believes that issues of public trust and risk perception will be important considerations in the final report."

*The interim report will eventually be posted on the National Academies website at <http://www.nas.edu/> and may also be obtained from the National Academies Press at <http://www.nap.edu/>.*

### ***State of Nebraska v. Central Interstate Low-Level Radioactive Waste Commission***

## **Central Compact Files Answer to Nebraska Suit Appealing Removal from Compact**

On September 16, the Central Interstate Low-Level Radioactive Waste Commission filed its answer to a lawsuit by the State of Nebraska that challenges a June 25 vote by commissioners from the member states of Arkansas, Kansas, Louisiana and Oklahoma to remove Nebraska from the Central Compact and to impose certain sanctions upon the state—including the imposition of a \$125,000 fine and the adoption of a resolution requiring that the state take no further action to block attempts to license a low-level radioactive waste disposal facility in Boyd County. (See *LLW Notes*, July/August 2003, pp. 1, 11 - 12.)

In its suit, which was filed in the U.S. District Court for the District of Nebraska, the state asserts that the sanctions levied by the compact commission are invalid and unenforceable because they violate state and federal law and the express terms of the Central Compact. In its answer, the Central Commission denies that any of its actions “violate any rights of Nebraska under State or Federal law, including the terms of the Compact.”

### **The Answer**

In its answer, the Central Commission admits that the State of Nebraska was designated as the compact’s host state in December 1987 and that, as an agreement state, federal authority for licensing a commercial low-level radioactive waste disposal facility within Nebraska was previously ceded to the state. However, the commission contends that Nebraska state agencies, including the Nebraska Department of Health and Human Services Regulation and Licensure and the

Nebraska Department of Environmental Quality, do not presently have any responsibility for licensing a commercial low-level radioactive waste disposal facility.

In addition, while agreeing in its answer with many of the facts about the case as laid out by Nebraska in its complaint, the Central Commission disputed Nebraska’s stated reasons for issuing a “Notice of Intent to Deny” US Ecology’s license application in January 1993, as well as the state’s characterization of events subsequent to the filing of an amended application. According to the commission’s answer, the “reasons stated in the Notice of Intent to Deny were mere pretext for a political decision made by the State of Nebraska.”

In response to Nebraska’s assertion that the commission overstepped its authority in revoking the state’s membership in the compact, the Central Commission points out that its Rule 23—which was the basis for the revocation—was unanimously adopted and that Nebraska voted in favor of such adoption. Moreover, the commission specifically denies “that any of the sanctions it imposed upon the State of Nebraska exceed those sanctions expressly provided for in the Compact.”

### **The Complaint**

Nebraska’s complaint was filed on August 22, 2003. It includes the following arguments:

- ◆ The legal doctrines of res judicata and collateral estoppel bar the Central Commission from seeking additional relief for claims that are based on the same operative facts as were previously litigated by the parties.
- ◆ The actions of the Central Commission are invalid because there was no neutral and unbiased decision maker in violation of the Compact’s “good faith performance” requirement and because the commission declined to provide the state with a complete statement of the charges being made and

sanctions sought in the revocation proceeding. According to Nebraska, the Central Commission "acted out of bias, prejudice, and a hardened predisposition against the State of Nebraska, and refused to hear and seriously consider the State's evidence in any or all of its particulars, all contrary to their contractual and statutory obligation to conduct a Rule 23 proceeding fairly, honestly, and objectively in accordance with the 'good faith performance' requirement . . ."

- ◆ The Central Commission's authority to impose sanctions in a Rule 23 proceeding are limited by the compact itself—i.e., "[t]he sanctions imposed by the Commission in its Revocation Letter are invalid to the extent that they exceed those sanctions expressly provided for in the Compact" and to the extent that they are vague and ambiguous and impede on Nebraska's sovereign immunity.
- ◆ The Central Commission's decision to revoke the state's membership in the compact "violates the Compact and federal law because it fails to find, as required by Compact Article V(g), that the State acted 'arbitrarily or capriciously' to deny or delay the issuance of the license or to otherwise fulfill its obligations under the Compact."
- ◆ The Commission's decision to revoke the state's membership was premature, unlawful and contrary to both the good faith obligation of the compact and federal law in that it occurred before there was final agency action—including de novo review in a contested case proceeding.

In the event that the court fails to find that the Central Commission's actions are barred by res judicata or collateral estoppel, then Nebraska argues that there is no factual or legal basis for revocation of the state's membership in the compact.

### **Requests for Relief**

In its lawsuit, the State of Nebraska requests the following relief:

- ◆ a declaration that the Central Commission's Rule 23 revocation proceedings and the actions taken therein are barred by the doctrines of res judicata and collateral estoppel;
- ◆ a declaration that the Central Commission's Rule 23 revocation proceedings and the actions taken therein violate both the Central Compact and federal law;
- ◆ a declaration that it is premature, inappropriate and improper for the Central Commission to consider whether the host state arbitrarily or capriciously delayed or denied US Ecology's license application—or otherwise failed to fulfill its compact obligations—until such time as the pending de novo contested case proceeding has concluded;
- ◆ a declaration that any sanctions set forth by the Central Commission that are not specified in Article VII(e) of the Compact are unauthorized and invalid under the compact and federal law and therefore null and void; and
- ◆ the granting of such other further relief as the court deems just and equitable in the circumstances.

In its answer, the Central Commission requests that the court enter a judgment in favor of the commission and dismiss the complaint with prejudice, taxing all costs of the action to the state.

***LeBoeuf, Lamb, Greene & MacRae v.  
U.S. Department of Energy***

## **Appellate Court Orders Lower Court to Review Hiring of Yucca Attorneys**

In late October, the U.S. Court of Appeals for the District of Columbia Circuit overruled a lower court's dismissal of a case that challenges, based on procurement regulations governing conflict of interests, the U.S. Department of Energy's hiring of a Chicago-based firm to help the department win approval of the planned Yucca Mountain high-level radioactive waste repository. In so doing, the appellate court ordered the U.S. District Court for the District of Columbia to re-examine whether Winston and Strawn, L.L.P. had conflicts of interest that should have barred them from being hired by the department in 1999 to assist DOE in preparing its application to operate the repository. In addition, the appellate court ordered the district court to consider several possible forms of relief for New York-based LeBoeuf, Lamb, Greene & MacRae, L.L.P.—the firm that lost out on the job.

At issue in the case is the fact that Winston and Strawn, as part of the 1999 contract, was hired to review work that, in part, was conducted previously by Winston and Strawn itself for a DOE contractor working on the Yucca project. That work was done pursuant to a 1992 subcontract held by Winston and Strawn for TRW Environmental Safety Systems, Inc.—which, at the time, was managing the Yucca project for DOE. Under that contract, according to the appellate court's ruling, Winston and Strawn were to provide "legal services to ensure that TRW performed in accordance with NRC regulations and guidelines."

Under the 1999 contract, Winston and Strawn were hired to advise the DOE's Office of General Counsel on matters related to the department's license application to the U.S. Nuclear Regulatory

Commission. The contract was for five years, but the parties jointly agreed to terminate it after two years. At the time, the only other bidder for the work was LeBoeuf, Lamb—which company bid more than \$3.6 million higher than Winston and Strawn. DOE has not hired a new firm to continue the license application work since termination of the 1999 contract with Winston and Strawn.

LeBoeuf, Lamb argued that the hiring of Winston and Strawn violated federal and DOE procurement regulations regarding conflicts of interest. They also asserted that the hiring violated contractual commitments made by the firm to TRW. Initially, they filed an administrative appeal to DOE. The department denied the appeal, however, holding that the 1999 contract was essentially a replacement of Winston's previous subcontract to TRW. LeBoeuf, Lamb then brought their appeal to the U.S. General Accounting Office—which office agreed with DOE, noting that the department's General Counsel has the ultimate responsibility for legal review of the license application and that the law firm is merely advising the department. The issue next went to the district court. The court concurred with DOE and GAO, ruling that the case is moot since the 1999 contract had already been voluntarily terminated by the parties.

The appellate court saw things differently, however. The court found that the department "knew, or should have known, that awarding the Yucca Mountain contract to Winston created apparent conflicts of interest for Winston that required further scrutiny." The court pointed out that in addition to the firm's previous work for TRW, the firm previously represented the Nuclear Energy Institute—a firm Yucca Mountain project supporter. The court concluded that, given the "evidence of Winston's apparent conflict of interest . . . the Department's decision to . . . [accept] Winston's no-conflict statement at face value is inconsistent with federal and DOE conflict-of-interest requirements."

*(Continued on page 16)*

*U.S. Department of Energy*

## DOE Disputes Review Board's Corrosion Concerns re Yucca Mountain

The U.S. Department of Energy is disputing an independent panel's expressions of concern regarding the potential for corrosion of metal containers at the planned Yucca Mountain high-level radioactive waste repository in Nevada. The Nuclear Waste Technical Review Board recently wrote to the department to outline its concerns. The department, however, says that all of the information has not been reviewed.

In response to release of the board's letter, Margaret Chu, Director of DOE's Office of Civilian Radioactive Waste Management, said that she is "deeply disappointed by the premature release of the letter's contents." According to Chu, "[t]he Board's conclusions did not acknowledge the dependence of those results on the existence of extreme and unlikely environmental conditions, nor did the letter say where the Board believes that such conditions are likely to occur." Chu also expressed concern that the board's statements are being taken out of context.



*(Continued from page 15)*

Some of the possible remedies to LeBoeuf, Lamb could include forcing the department to award the contract directly to LeBoeuf, Lamb if the legal services currently being sought by DOE are substantially similar to those sought in the 1999 contract bid; forcing DOE to select a new contractor under a new bidding process; or forcing the department to pay LeBoeuf, Lamb's costs for preparing the unsuccessful 1999 bid.

## Poll Finds Majority of Nevadans Oppose Yucca Mountain Facility

A recently released poll found that the majority of Nevadans are opposed to the planned Yucca Mountain high-level radioactive waste repository. The poll, which was commissioned by the state, had an error margin of plus or minus 4.9 percentage points. It found that 75 percent of respondents statewide would vote against a plan to bury 77,000 tons of nuclear waste in tunnels below Yucca Mountain. Sixty six percent of the respondents said that they are in support of the filing of lawsuits to block the plan, and 65 percent said that they think that the state should continue its opposition even if it means turning down benefits offered by the federal government. The poll, which was conducted October 4 – 22 by Northwest Survey and Data Services, randomly surveyed 401 Nevadans on the telephone.

In response to the poll, Robert Loux, Executive Director of the Governor's Agency for Nuclear Projects, said that "[t]hese results should put to rest any notion that Nevadans are prepared to give up the fight and meekly accept a project that is both unsafe and unnecessary." The State of Nevada is a vocal opponent of the project and currently has five lawsuits relating to the project pending against the federal government. The Bush administration has already approved the site, but final approval must come from the U.S. Nuclear Regulatory Commission.

In response to the poll, the Department of Energy spokesman Joe Davis was quoted as saying that "Yucca Mountain is a national issue, and a majority of the House and Senate overwhelmingly supported moving forward with Yucca Mountain in the interest of national security and energy security . . . We are looking at this from a national perspective, and we need to move forward." Davis stressed that the Energy Department has been studying Yucca Mountain for 25 years and has determined it to be a suitable site. "We would not move forward if we didn't think it was safe," said Davis.



## ***U.S. Environmental Protection Agency***

### **Leavitt Receives Senate Confirmation for EPA Post**

On Tuesday, October 28, the U.S. Senate confirmed the nomination of Utah Governor Mike Leavitt (R) by a vote of 88 to 8 to head the U.S. Environmental Protection Agency. The nomination, which was made by President Bush in early August, had been placed on hold by six different Democrats and was the target of a threatened Democratic filibuster. (See *LLW Notes*, July/August 2003, pp. 18 – 19.) Threats to the nomination were said not to be based on issues related to Leavitt himself, but rather over President Bush's environmental record and as a means of forcing the administration to make information available on various issues.

In response to the confirmation vote, Senator James Inhofe, Chair of the Senate Environment Committee, released a statement that reads in part: "Today's vote confirms what I have been saying about this nomination for some time: that if we could remove partisan presidential politics from the debate, we could show that Mike Leavitt enjoys overwhelming bipartisan support . . . I think the 88 members of the Senate, Democrats and Republicans, who voted 'yes' today proved that."

Leavitt is the nation's longest-serving governor. He is an advocate of "moving power to lower levels, separating policymaking from data-gathering, using financial incentives rather than regulations and relying on cost-benefit analysis." His appointment is expected to signal a shift of power on environmental issues from the federal government to the states and is anticipated to maintain the low-profile at EPA that is desired by Bush.

Leavitt will replace Christine Todd Whitman as Administrator of the agency. Whitman

announced in May that she was resigning her post at EPA after two-and-one-half turbulent years as the Bush administration's chief environmental defender. Whitman, who served two terms as Governor of New Jersey prior to her appointment as EPA Administrator, said she was resigning because she wants to spend more time with her family. Her resignation became effective June 27. (See *LLW Notes*, May/June 2003, p. 16.)

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

### **Reid Aide to Get NRC Nomination**

Reports indicate that Senator Harry Reid of Nevada has reached agreement with the Bush administration to have a top aide of the Senator nominated to the U.S. Nuclear Regulatory Commission. The aide, Gregory Jaczko, is Reid's Chief Science Advisor and has been at the forefront of many of the Senator's efforts to fight nuclear initiatives of the Bush administration - including the planned Yucca Mountain high-level radioactive waste repository in Nevada. The agreement was reportedly reached after Reid threatened to place a hold on all of the President's non-military, Executive Branch nominees - including that of Utah Governor Mike Leavitt to head the U.S. Environmental Protection Agency. As part of the agreement, Reid removed his hold on Leavitt's nomination.

If confirmed by the Senate, Jaczko would have an important vote in the commission's upcoming review of the safety of the planned underground repository. NRC must certify that the U.S. Department of Energy's design for the repository will meet federal safety standards. DOE is expected to apply to the Commission for a construction application in late 2004.

However, of the five NRC Commissioners, 3 of them would be Republicans and only 2 would be

Democrats. The law requires that the NRC include at least two members of each party. The Democratic slot that is vacant was last held by Commissioner Greta Dicus, who left the Commission this summer after Bush declined to reappoint her. The Republican slot was vacated when former Chair Richard Meserve left in March to become Chair of the Carnegie Institution of Washington.

In addition, several lawsuits by Nevada in opposition to the planned Yucca Mountain repository remain pending in federal courts.

trying to do just that, but the administrative review process is taking longer than anticipated. The board recently postponed its ruling until mid-April, citing the complexity of the material presented, the number of expert witnesses, the volume of follow-up questions, and the strict “safeguards” requirements to which much of the material is subject. NRC, which initially wanted a decision from the board by the end of this year, now says that its part of the review process will likely require additional delay—such that a decision is now expected in June 2004.

The delays are being welcomed by the State of Utah, which is a leading opponent of the proposed facility. PFS, however, would prefer to avoid the delays, citing the additional financial costs being incurred by the prolonged process. When PFS initially applied for its license in 1997, the consortium anticipated a three to four year time-frame before issuance of a license.

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### PFS Ruling Delayed

Both the U.S. Nuclear Regulatory Commission and the Atomic Safety and Licensing Board recently announced delays in the decision process for the proposed spent fuel storage facility on the Skull Valley Band of Goshute Indians reservation in Utah. The facility is being proposed by an eight-member consortium of nuclear utilities as a way of dealing with the delays in the licensing process for the Yucca Mountain high-level radioactive waste disposal facility in Nevada. (See *LLW Notes*, July/August 2000, p. 26.) As proposed, the facility would store up to 44,000 tons of spent fuel for up to 40 years on the reservation while awaiting opening of the Yucca Mountain facility.

A license application for the proposed PFS facility was rejected by the Atomic Safety and Licensing Board in March 2003 due to a concern over the consequences of a crash by military aircraft, since the proposed storage facility is to be built on the jet flight path. (See *LLW Notes*, March/April 2003, p. 19.) Nonetheless, the board’s decision invited PFS to try to prove that the waste would not be disturbed in the event of such a crash and that a license should therefore be issued. PFS is

## **Proposed Wilderness Bill Could Kill PFS Facility**

The Parks Subcommittee of the U.S. House of Representatives is considering a bill that would subvert the proposed PFS spent fuel storage facility by creating a federal wilderness area and restricting access to the Goshutes reservation. The legislation, H.R. 2909, would set aside 500,000 acres of Utah's Air Force Test and Training Range for wilderness protection. The bill, known as the Cedar Mountain Wilderness Protection Act, is being sponsored by Utah's congressional delegation.

A hearing was held on the bill on October 18. The hearing focused mainly on proposed PFS facility and whether or not it should be allowed to go forward. Testimony varied and several officials of federal agencies seemed hesitant to support Congressional legislation that would thwart the on-going administrative process. Environmentalists also offered concerns, testifying that they share the concern of public safety raised by the proposed PFS facility, but that the proposed legislation raised other concerns such as the weakening of wilderness protections by giving the Air Force too much control over the sensitive lands.

Similar legislation was introduced last year. The current legislation, however, proposes to allow limited military access to the wilderness area to maintain electronic communications equipment.

## **NRC Renews St. Lucie License—Renewal Process Moves Forward for Farley and Fort Calhoun Plants**

The U.S. Nuclear Regulatory Commission has renewed for an additional 20 years the operating license of the St. Lucie Nuclear Plant, Units 1 and 2, located southeast of Fort Pierce, Florida. In addition, the agency has issued its final environmental impact statement on the proposed renewal of the operating license of Unit 1 at the Fort Calhoun Station nuclear power plant, which is located 19 miles north of Omaha, Nebraska, in Washington County. The statement contains NRC staff's conclusion that there are no environmental impacts that would preclude license renewal for an additional 20 years of operation. NRC also recently announced the availability of an application for a 20-year renewal of the operating licenses for Units 1 and 2 at the Joseph M. Farley nuclear power plant near Dothan, Alabama.

### **St. Lucie Nuclear Plant**

The St. Lucie Plant is operated by Florida Power & Light Company (FPL). The operating license for Unit 1 was set to expire on March 1, 2016 and for Unit 2 on April 6, 2023. A license renewal application for the plant was submitted to the NRC on November 29, 2001. The renewal extends the license for Unit 1 until March 1, 2036 and for Unit 2 until April 6, 2043.

Following several public meetings, NRC issued a Final Supplemental Environmental Impact Statement for the St. Lucie Plant in May 2003, concluding that there were no impacts that would preclude renewal of the licenses for environmental reasons. A Safety Evaluation Report on the plant was issued in July 2003 which found that there were no safety concerns that would preclude license renewal because the licensee had

## Federal Agencies and Committees *continued*

demonstrated the capability to manage the effects of plant aging.

Copies of documents related to the St. Lucie relicensing can be found at <http://www.nrc.gov/reactors/operating/licensing/renewal/applications/st-lucie.html>.

### **Calhoun Nuclear Plant**

The current operating license for Unit 1 at the Calhoun Nuclear Power Plant is set to expire on August 9, 2013. The Omaha Public Power District, which owns the plant, submitted an application for renewal of the license on January 9, 2002. As part of the environmental review process, NRC held public meetings near the plant to discuss the scope of the review and a draft version of the environmental impact statement. Comments were received from members of the public, local officials, and representatives of other agencies.

Copies of the final environmental impact statement can be obtained electronically through the NRC's Agencywide Documents Access and Management System (ADAMS) on the NRC's web site at <http://www.nrc.gov/reading-rm/adams/web-based.html>. To do so, enter accession number ML032110191.

### **Farley Nuclear Plant**

The Farley Plant is operated by Southern Nuclear Operating Company. The current operating licenses for Units 1 and 2 are set to expire on June 25, 2017 and March 31, 2021, respectively. Southern Nuclear submitted a license renewal application for the plant on September 15, 2003. The NRC staff is currently conducting an initial review of the application to determine whether it contains enough information for the required formal review. If the application has sufficient information, the NRC will formally "docket," or file, the application and will announce an opportunity to request a hearing.

A copy of the application will be available on the NRC web site at <http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html>. It will also be available through the ADAMS system.

### **NRC Regulations/Status of Renewals**

Under NRC regulations, a nuclear power plant's original operating license may last up to 40 years. License renewal may then be granted for up to an additional 20 years, if NRC requirements are met.

To date, NRC has approved license extension requests for eighteen reactors. (See *LLW Notes*, May/June 2002, p. 19.) In addition, NRC is currently processing license renewal requests for fourteen other reactors. Additional renewal applications are expected, shortly. Several individuals, including the Senior Vice President and Chief Nuclear Officer of the Nuclear Energy Institute, have recently been quoted as predicting that most, if not all, nuclear reactors will apply for license extensions in the coming years. (See *LLW Notes*, March/April 2001, p. 14.)

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

## NRC Outlines Homeland Protection Progress

In an August 29 letter to Tom Ridge, Secretary of Homeland Security, NRC Chair Nils Diaz outlined recent steps that the U.S. Nuclear Regulatory Commission has taken since September 11, 2001 to further enhance security at licensed nuclear facilities and of radioactive material. Former Chair Richard Meserve had previously sent similar letters to the Homeland Security Office on September 5, 2002 and March 31, 2003.

Diaz writes in his letter that “[s]ince March 2003, the Commission has continued to enhance security requirements for nuclear power plants and for the handling of high-risk radioactive sources in the post-9/11 environment through organizational changes, orders to our licensees, and many other actions.” For instance, both the Office of the Chairman and the Office of the Executive Director of Operations were reorganized after Diaz took over as Chair to help complete remaining security initiatives and to ensure their timely implementation. The position of Deputy Executive Director for Homeland Protection and Preparedness was created to increase the agency’s attention to cross-cutting issues that affect security, incident response, emergency preparedness, vulnerability assessments and mitigation strategies, and external integration of comprehensive strategies for these areas.

The following are some of the actions taken by the NRC since September 11 that were outlined in Diaz’ letter:

- ◆ the initiation of new studies of the security and vulnerability of nuclear power plants, including assessments for land-based, water-borne and aircraft terrorist attacks;
- ◆ the issuance of orders to nuclear power reactors and category 1 fuel cycle licensees to require security enhancements to protect against the revised design basis threat (DBT);
- ◆ the issuance of orders to enhance the readiness and capabilities of security force personnel at nuclear power plants by limiting security force personnel working hours and requiring additional training and qualification of security officers;
- ◆ the resumption of force on force exercises as part of a pilot program, with exercises completed at nine nuclear power plant sites and planned at a rate of approximately two per month in fiscal year 2004;
- ◆ the undertaking of a cooperative effort with the U.S. Department of Energy to identify radioactive materials of concern and to increase protection of high-risk radioactive sources which could be used in radiological dispersal or radiological exposure devices;
- ◆ the continued enhancement of NRC’s incident response program;
- ◆ the establishment of an active liaison with the Department of Homeland Security and the strengthening of existing coordination with other agencies and organizations, such as the Homeland Security Council, National Security Council, Federal Bureau of Investigation, Central Intelligence Agency, Department of Defense and Department of Justice;
- ◆ the establishment of a protected server system to facilitate sensitive information exchanges between NRC and licensees and cleared state officials;
- ◆ the joint sponsoring, with the Department of Homeland Security, of a two-day workshop on civilian nuclear security issues for state officials;
- ◆ participation by the agency in an international conference on protection of high-risk radioactive sources; and
- ◆ the continuation of work toward the passage of legislative proposals to enhance security of nuclear facilities and materials.

Diaz' letter, as well as those of former Chair Meserve, is available for viewing on the NRC's website at [www.nrc.gov](http://www.nrc.gov).

### NRC Seeks to Fix Errors in NMMSS

The U.S. Nuclear Regulatory Commission has ordered approximately 1,100 companies to report by January 6 on the precise amount of certain nuclear materials in their possession as part of an agency effort to update the Nuclear Materials Management and Safeguards System (NMMSS)—a database used by NRC and the U.S. Department of Energy to track a variety of nuclear materials held by power reactors, research reactors, spent fuel storage sites and educational institutions, among others. NRC is updating NMMSS—which is operated for DOE by a contractor—in response to an October 2001 report by DOE's Inspector General that concluded the department could not account for certain nuclear material which was loaned or leased by the government and that the database has a significant amount of erroneous information on it. Materials covered by NRC's order include natural uranium; depleted uranium or thorium that were imported from foreign countries; uranium-235; uranium-233; plutonium; and government-owned deuterium, tritium, curium, americium, neptunium, californium, berkelium, and enriched lithium.

The 2001 Inspector General's report found that the NMMSS database contained significant errors including the reporting of substantial amounts of nuclear material at two nuclear facilities that no longer existed, the reporting of holdings by facilities that were "not logical and could not be adequately explained or reconciled," and the submission of incomplete records that do not contain information on all government-owned nuclear material that had been transferred to NRC licensees. The report also found 180 negative balances that illogically implied that the

government had taken back more material than it provided at 119 facilities.

Although licensees have until January 6 to file the reports, NRC is asking that they be submitted as soon as "reasonably achievable." The reports can be based on licensees most recent physical inventories or records of the materials. Once the reports are submitted and reviewed, NRC plans to match up the newly submitted data with NMMSS records and to help licensees fix any errors that they have made.

### NRC Changes Decommissioning Funding Regulations

The U.S. Nuclear Regulatory Commission is amending its regulations to require certain licensees using substantial quantities of nuclear materials to increase funding for financial assurance to cover decommissioning costs. The changes are intended to bring the amount of required financial assurance to be more in line with current decommissioning costs and to provide adequate assurance that timely decommissioning can be carried out. The amendment affects nuclear materials licensees, but not nuclear power plants which are covered by separate regulations.

Under the amended regulations, the amount of financial assurance that nuclear materials licensees must provide can be based on either a facility-specific decommissioning cost estimate provided by the licensee in a decommissioning funding plan or on dollar amounts specified in the regulations. Previously, the regulatory amount was based on decommissioning cost studies that were about 15 years old. Recent studies show that decommissioning costs have increased substantially. The agency is therefore raising all specified amounts by 50 percent and estimates that this additional financial assurance for decommissioning will provide approximately \$80 million in total additional funds that would be available to cover decommissioning expenses.

Other changes in the rule include:

- ◆ All nuclear waste processor and waste collector licensees will have to provide financial assurance. Previously, only about half of the NRC waste processor and waste collector licensees were required to have financial assurance. The others had possession limits below the threshold for requiring financial assurance.
- ◆ Large irradiator licensees (who primarily use nuclear materials for sterilization of medical equipment and food products) and nuclear processors and waste collectors will not be allowed to use the specific amounts in the regulations as a basis for financial assurance for decommissioning and will have to base their funding on site-specific decommissioning cost estimates.
- ◆ Decommissioning cost estimates will have to be updated at least every three years.

The approved methods of providing financial assurance are not changed by the amendments. These include prepayment; a surety (in the form of a bond, letter of credit or line of credit), insurance or other guarantee method such as a parent company guarantee if that company meets certain financial tests; or an external sinking fund in which deposits are made at least annually, coupled with a surety method or insurance. For federal, state or local government licensees, a statement of intent may be used, indicating that funds will be obtained when necessary.

A proposed rule on changes to the decommissioning regulations was published in the *Federal Register* for comment on October 7, 2002. A *Federal Register* notice, to be published shortly, will describe changes made as a result of the comments received. The revised regulation will be effective 60 days after publication of the notice. Affected licensees will then have from 12 to 24 months to provide the increased financial assurance, depending on the type of license.

## NRC Holds Annual Nuclear Safety Research Conference

The U.S. Nuclear Regulatory Commission held its annual Nuclear Safety Research Conference at the Metro Center Marriott Hotel in Washington, D.C. from October 20 – 22. The conference was open to the public. Guest speakers and panelists included NRC Chair Nils Diaz, NRC Commissioners Edward McGaffigan, Jr. and Jeffrey Merrifield, along with representatives from international organizations, industry, government, and the research community.

The conference—which serves as a leading forum for experts to discuss the results and insights obtained from the NRC’s extensive research program, as well as to take a look at research activities planned in the near future—featured three panel discussions and focused on major issues of interest to the nuclear community. Participants included researchers, regulators, utility representatives, and public interest groups from the United States and more than 20 foreign countries.

This year’s agenda offered technical sessions that included advanced reactors, decommissioning, behavior of nuclear fuels and operating experience evaluations. Two days were devoted to plenary sessions on risk-informed regulation/realistic conservatism and materials degradation—present status and future direction. A panel discussion on knowledge management and data preservation were also part of the conference.

## NRC Amending Rules re Electronic Documents Submission

The U.S. Nuclear Regulatory Commission is revising its rules on when and how licensees, vendors, applicants and members of the public may submit documents electronically to the agency in an effort to expedite and ease communication with the agency. However, electronic submissions will remain voluntary—the agency will continue to accept submissions via paper documents.

The revised rule and accompanying guidance—both of which will be published in the *Federal Register* shortly—will become effective on January 1, 2004. They authorize the voluntary electronic submissions to the agency through such means as CD-ROM, e-mail, telefax and the agency's EIE. The EIE enables the electronic submission of documents in a secure web-based environment. The guidance document accompanying the revised rule explains when and how to submit documents to the agency electronically, when and how to use electronic signatures, what methods and formats may not be used, and procedures for the treatment of non-public information.

The proposed rule and accompanying guidance were published in the *Federal Register* on September 6, 2002 and a public meeting on the documents was held in October of 2002. The revised rule and accompanying guidance include significant changes from the earlier draft that reflect public comments received in response to the earlier *Federal Register* notice and at the meeting last year. For instance, NRC has eliminated nearly all requirements for submissions of multiple copies of paper or CD-ROMs. Instead, submitters may file a single copy.

The submission of documents in hearings under NRC regulations in Part 2 and other parts that

govern hearings are not covered by the revised rule and guidance. The agency will seek public comment on a separate rule and guidance governing procedures for electronic filings in adjudicatory proceedings. Until then, adjudicatory documents submitted to the Atomic Safety and Licensing Boards will continue to be filed in paper, unless electronic filing is authorized on a case-by-case basis.

The revised rule and accompanying document will be available on NRC's web site at <http://www.nrc.gov/site-help/eie.html>.

*For additional information, please contact Brenda Shelton at [BES1@nrc.gov](mailto:BES1@nrc.gov).*

## NRC Issues Information Notice re Potential for Worm Infection of Nuclear Power Plant Network

The U.S. Nuclear Regulatory Commission has issued an Information Notice to alert nuclear power plant operators to a potential vulnerability of their computer network server to infection by the Microsoft SQL Server Worm. The vulnerability was evidenced by a January event at the shutdown Davis-Besse nuclear power plant. The worm infection increased data traffic in the site's network resulting in the plant's Safety Parameter Display System and plant process computer being unavailable for several hours. Public health and safety were never impacted during the incident, however, since neither of the affected systems concerns the safe operation of a nuclear power plant. NRC regulations require safety-related systems to be isolated or have send-only communication with other systems.



The licensee at Davis-Besse, First Energy Nuclear, investigated the incident and found a contractor established an unprotected computer connection to its corporate network, through which the worm reached the plant network. The investigation also found plant computer engineering personnel were unaware of a security patch that prevented the worm from working. Corrective actions include requiring documentation of all external connections to the internal network, installing an additional layer of security software, and ensuring computer personnel review new security patches and install them properly.

The Information Notice, Number 2003-14, titled “Potential of Plant Computer Network to Worm Infection,” can be found on the NRC’s web site at <http://www.nrc.gov/reading-rm/doc-collections/gen-comm/info-notices/2003/>.

## *U.S. Congress*

### **DOE Brings Reclassification Issue to Congress**

The U.S. Department of Energy is trying to convince Congress to add language to the Energy Bill that will grant the department the authority to reclassify certain high-level nuclear waste as low-activity waste prior to treating the material. Congress has indicated that it is reluctant to do so, however, with the U.S. House of Representatives unanimously passing a resolution on October 2 that directs the conference committee that is working to reconcile the House and Senate versions of the Energy Bills not to insert the department’s proposed language.

#### **Legal Status on the Issue**

The department’s request for congressional action follows a July ruling by the U.S. District Court for the District of Idaho that struck down as “invalid” a 1999 DOE rule, known as Order 435.1, that serves as the department’s principal interim regulatory tool for managing its radioactive waste. (See *LLW Notes*, July/August 2003, pp. 15-16.) The rule provides, in part, that the department may reclassify high-level nuclear waste as “incidental” waste suitable for disposition in underground storage tanks, thereby effectively exempting the waste from storage and handling requirements contained in the Nuclear Waste Policy Act of 1982. Two environmental organizations—the Natural Resources Defense Council and the Snake River Alliance—and two Indian Tribes challenged the rule in federal court, with the states of Washington, Oregon, Idaho and South Carolina filing “friend of the court” briefs in support of the plaintiffs. (See *LLW Notes*, November/December 2002, p. 15.) After reviewing the issue, the court found that the department’s rule directly conflicts with provisions of the Nuclear Waste Policy Act. According to

the court, the department “does not have the discretion to dispose of [high-level radioactive waste] somewhere other than a repository established under [the Nuclear Waste Policy Act].” DOE has appealed the court’s ruling to the U.S. Court of Appeals for the Ninth Circuit.

As a routine part of the appeals process, both sides were required to file paperwork by October 10 indicating whether they would be willing to take the dispute to a mediator instead of arguing before the appellate court. Although the parties are legally allowed to keep their filed answer on this question confidential, the plaintiffs have stated that they are willing to take the dispute to a mediator. DOE’s position on the matter is not known, at this time.

### **Congressional Activity**

Despite the October 2 House resolution opposing the addition of language to the Energy Bill to provide DOE the authority to reclassify wastes, the department continues to try to convince the committee and certain congressional members to do so anyway—noting that the resolution is not binding on the committee. Inaction, according to DOE, could drastically delay cleanup efforts and increase costs significantly.

In that light, Representative Joseph Barton (R-TX), Chair of the House Subcommittee on Air Quality and Power, added additional statements to his October 2 floor remarks for publication in the *Congressional Record*, a common practice among members of Congress. The revised remarks note that it is “important that DOE reach agreement with affected states on the appropriate solution to this matter.” Barton went on to say as follows: “Without clarification of DOE’s authorities with respect to high-level wastes, we may experience cleanup delays as DOE tries to settle this in the courts. DOE has recently estimated that if Congress does not address this matter, we may incur an additional \$60 billion in cleanup costs.” Barton noted that DOE is in “advanced

negotiations” with affected governors on a solution to the issue.

### **Background**

The rulemaking put forth by DOE allows the department to reclassify waste as incidental if steps are taken to reduce its radioactivity levels to the extent practicable and if those levels are no higher than the most radioactive waste classified as low-level radioactive waste. DOE stands by its rulemaking, contending that it has “unfettered discretion” in deciding how to dispose of radioactive waste. The department argues that residual amounts of waste can be safely disposed in underground storage tanks using grouting—a procedure which involves filling mostly empty tanks with concrete.

The affected states and plaintiffs in the lawsuit, however, argue that the rulemaking violates federal nuclear waste disposal laws and is merely an effort by DOE to save cleanup money. They contend that the rulemaking violates the Nuclear Waste Policy Act, which requires that DOE dispose of all high-level nuclear waste in a federal underground repository. The law defines all waste generated by past nuclear reprocessing operations as high-level, so the plaintiffs argue that all tank wastes must be disposed in an underground repository.

## To Obtain Federal Government Information

### by telephone

- DOE Public Affairs/Press Office .....(202) 586-5806
- DOE Distribution Center .....(202) 586-9642
- DOE's National Low-Level Waste Management Program Document Center .....(208) 526-6927
- EPA Information Resources Center .....(202) 260-5922
- GAO Document Room .....(202) 512-6000
- Government Printing Office (to order entire *Federal Register* notices) .....(202) 512-1800
- NRC Public Document Room .....(202) 634-3273
- Legislative Resource Center (to order U.S. House of Representatives documents) .....(202) 226-5200
- U.S. Senate Document Room .....(202) 224-7860

### by internet

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

**To access a variety of documents through numerous links, visit the web site for the LLW Forum, Inc. at [www.llwforum.org](http://www.llwforum.org)**

### Accessing LLW Forum, Inc. Documents on the Web

*LLW Notes*, LLW Forum Meeting Reports 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 LLW Forum Meeting Reports are also available on the LLW Forum web site at [www.llwforum.org](http://www.llwforum.org). The *Summary Report* and accompanying Development Chart, as well as LLW Forum News Flashes, 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  
Nebraska \*  
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**

Maine  
Texas \*  
Vermont

### **Unaffiliated States**

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