

# LLW *notes*

Volume 18, Number 3 May/June 2003

## ***Alabama, Florida, Tennessee, Virginia and the Southeast Interstate Low-Level Radioactive Waste Management Commission v. State of North Carolina***

### **Supreme Court Agrees to Exercise Original Jurisdiction In Southeast Compact/North Carolina Suit**

On Monday, June 16, the U.S. Supreme Court granted a Motion for Leave to File a Bill of Complaint filed by the Southeast Interstate Low-Level Radioactive Waste Compact Commission and four of its member states against the State of North Carolina. The compact is seeking the enforcement of sanctions against the state for its failure to develop a regional low-level radioactive waste disposal facility. The Court gave North Carolina 30 days in which to file an answer. In the alternative, under regular Court procedures, the state may file a Motion to Dismiss the Bill of Complaint based on pleadings already filed in the action. No additional scheduling or information was provided in the Court's order.

The action, which accuses North Carolina of "failing to comply with the provisions of North Carolina and the Southeast Compact laws and of not meeting its obligations as a member of the Compact," seeks to enforce \$90 million in sanctions against the defendant state. It contains various charges against North Carolina, including violation of the member states' rights under the compact, breach of contract, unjust enrichment, and promissory estoppel. (See *LLW Notes*, May/June 2002, pp. 1, 11.) It is being pursued by the Southeast Compact Commission and four of its member states—Alabama, Florida, Tennessee, and Virginia.

Rather than file the case in a lower court, with the opportunity for subsequent appeals, the petitioners requested that the Supreme Court exercise its original jurisdiction in the case. Under Article III, Section 2 of the U.S. Constitution, the Court may exercise original jurisdiction over a judicial case or controversy between states. In determining whether or not to do so, the Court has generally considered two factors: (1) the "nature of the interest of the complaining State," focusing mainly on the "seriousness and dignity of the claim," and (2) "the availability of an alternative forum in which the issue tendered can be resolved." By its June 16 order, the Court determined that the petitioners' case meets the requisite factors and opted to exercise its authority.

*For specific arguments raised in briefs filed by the petitioners and respondent, see LLW Notes, July/August 2002, pp. 15-17.*

*For additional information, see a related story in this issue on North Carolina's response to the petitioners' motion.*

#### **In This Issue**

Texas Bill re LLRW Disposal Facility Passes Legislature - page 7

North Carolina Files Supplemental Brief in Response to Solicitor General's Recommendation re Original Jurisdiction - page 10

DOE Considers Alternative Waste Treatment Technologies for Hanford - page 15

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# Low-Level Radioactive Waste Forum, Inc.

## LLW Notes

Volume 18, Number 3 May/June 2003

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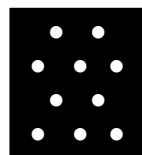
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## Table of Contents

<b>Courts (Cover Story)</b> .....	1
Supreme Court Agrees to Exercise Original Jurisdiction In Southeast Compact/North Carolina Suit .....	1
<b>Low-Level Radioactive Waste Forum, Inc</b> .....	4
September 2003 LLW Forum Meeting to be Held in Oak Brook, IL .....	4
Announcing The National Directory of Brokers and Processors.....	4
<b>States and Compacts</b> .....	5
Chem-Nuclear Founder Passes Away .....	5
United States Joins IAEA Waste Convention .....	5
Utah Waste Task Force Holds its First Meeting .....	5
Cedar Mountain Proposal Discussed at Tooele County Meeting .....	6
Denver Imposes Additional Requirements re Disposal at Cotter.....	6
Texas Bill re LLRW Disposal Facility Passes Legislature .....	7
Texas Commission on Environmental Quality: Schedule of Activities.....	7
The Southeast Compact Commission Announces the Richard S. Hodes, M.D. Honor Lecture Award: A New Awards Program to Recognize Innovation in the Management of Low-Level Radioactive Waste .....	8
Texas Ecologists Renamed US Ecology .....	8
Big Rock Reaches Milestone.....	9
<b>Courts (continued)</b> .....	10
North Carolina Files Supplemental Brief in Response to Solicitor General's Recommendation re Original Jurisdiction .....	10
Appellate Court Hears Arguments in Central Compact/Nebraska Dispute .....	12
Court Halts DOE Shipments to Hanford .....	13
WIPP Appeal Dismissed as Moot as Closure Progresses .....	14
<b>Federal Agencies and Committees</b> .....	15
Contractor Report Recommends Further Analysis of Yucca Mountain Aircraft Threat.....	15
DOE Considers Alternative Waste Treatment Technologies for Hanford.....	15
Whitman Steps Down From EPA Post .....	16
NRC Licensing Board Finds PRS Financially Qualified and Rules Seismic Risks Acceptable .....	16
NRC Renews Licenses for Peach Bottom Atomic Power Station.....	17
NRC Issues Final Rule re Release of Parts of Reactor Sites for Unrestricted Use.....	18
Commissioner Dicus Receives Radiation Protection Award.....	19
NRC Issues New Security Rules for Nuclear Plants .....	19
NRC Seeks Public Comment on Additional Guidance for Early Site Permit Applications.....	20
NRC Proposes Amending Regulations for Structures, Systems and Components .....	20
<b>Congress</b> .....	21
Senate Bill Would Require DOE to Develop Greater-Than-Class C Disposal Facility .....	21
U.S. Senate Rejects Attempt to Strip Federal Loan Guarantees for New Nuclear Power Plants from Energy Legislation .....	21
NEI Re-Elects Chair .....	22
<b>Obtaining Publications</b> .....	23



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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 to be Held in Oak Brook, IL

The next meeting of the Low-Level Radioactive Waste Forum, Inc. is being sponsored by the State of Illinois. It will be held on September 22-23 at the Hyatt Lodge at the McDonald's Campus in Oak Brook, Illinois.

Persons interested in attending the meeting should complete and submit a registration form—which can be found on the LLW Forum's web site at [www.llwforum.org](http://www.llwforum.org) —and make hotel reservations by calling (800) 233-1234.

**Hotel** A block of 40 rooms has been reserved at the hotel for meeting attendees at the special rate of \$89.00 + tax per night for single occupancy and \$114.00 for double occupancy. There is room availability for the weekend before the meeting and the day after the meeting at the same rate. Non-smoking rooms are available. *Please ask for a room in the LLW Forum block.* Reservations must be made by August 30, 2003 to obtain the special rate. Participants must guarantee the first night's rate and tax. Cancellations must be made one week prior to arrival or the deposit will be forfeited. Check-in time is 3:00 P.M. Check-out time is 12:00 noon.

**Transportation** The hotel is located approximately 15 miles from the O'Hare International Airport and 18 miles from Midway Airport. Parking at the hotel is free. Valet parking available at \$5.00 per day. Shuttle and taxi service to and from the airport to the hotel is available at approximately \$20.00-\$25.00 one-way.

**Registration** The meeting is free for members of the LLW Forum, Inc. Registration for non-members is \$500.00, payable to "LLW Forum, Inc." Attendees should complete the registration

form on the LLW Forum's web site and forward with payment, if applicable, to: Marcia Marr, Illinois Department of Nuclear Safety, 1035 Outer Park Drive, Springfield, Illinois 62704. (Phone: 217/785-9982; Fax: 217/785-9977; E-mail: [marr@idns.state.il.us](mailto:marr@idns.state.il.us))

### ANNOUNCING

## The National Directory of Brokers and Processors

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

The Low-Level Radioactive Waste Forum, Inc. and the Southeast Compact Commission are pleased to announce the creation of an electronic National Directory of Brokers and Processors.

The directory is intended for use by compacts, states, federal agencies, and users of radioactive materials to provide information about companies that package, transport, process, or otherwise manage radioactive material in preparation for ultimate disposal. Access to the site and listing in the directory are free of charge. A printed version of the directory will be available in late 2003.

The directory is now available for viewing and may be accessed at [www.bpdirectory.com](http://www.bpdirectory.com).

### Attention Brokers and Processors

To get a free listing in the directory or additional information, go to [www.bpdirectory.com](http://www.bpdirectory.com) or contact:

Todd Lovinger  
Executive Director  
Low-Level Radioactive Waste Forum, Inc.  
1619 12th Street, NW  
Washington, DC 20009  
202.265.7990

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

## **Chem-Nuclear Founder Passes Away**

Bruce Johnson—one of the founders of Chem-Nuclear Systems, Inc.—recently passed away at the age of 77 after years of battling a blood disorder and other health problems. Johnson helped found Chem-Nuclear—a publicly traded company that, over the years, has been involved in processing hazardous chemical wastes and disposing of low-level radioactive waste at its Barnwell, South Carolina facility—in 1972. As president of the company, Johnson oversaw an increase in Chem-Nuclear's sales from \$531,000 in 1972 to \$61 million in 1981—of which nearly \$7.5 million represented profit. The company was heavily involved in the cleanup of the Three Mile Island nuclear power accident in 1979. Acquired by Waste Management, Inc. in 1982, the company is now owned by GTS Duratek, Inc. Subsequent to the takeover, Johnson served as a corporate consultant and was president of Geosafe Corporation, another waste handling firm.

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## **United States Joins IAEA Waste Convention**

### **National Report Completed and Sent to IAEA**

On April 9, 2003, the United States of America ratified the “Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management” (Joint Convention)—which will enter into force on July 10, 2003. The purpose of the Joint Convention is to provide an international peer review process

*(Continued on page 12)*

### ***Northwest Compact/Utah***

## **Utah Waste Task Force Holds its First Meeting**

On May 20, a 16-member task force appointed by the Utah legislature to study of a wide range of nuclear waste issues in the state held its first meeting at the state capitol. During the course of the meeting, testimony was heard from waste industry representatives, anti-nuclear activists, and the Utah Department of Environmental Quality. In addition, staff of the Committee from the Office of Legislative Research and General Counsel provided background information on hazardous, nonhazardous, solid, and radioactive waste to members of the task force at the beginning of the meeting. The task force, which is being co-chaired by Representative Stephen Urquhart (R) and Senator Curtis Bramble (R), met for several hours. During most of the meeting, task force members listened to testimony from various parties—interrupting every once in a while to pose a question or ask for clarification on a particular issue.

The task force was approved by the Utah legislature earlier this year in response to a variety of bills introduced on radioactive and hazardous waste disposal issues. (See *LLW Notes*, March/April 2003, pp. 6-7.) The task force has 19 months to study a wide range of nuclear waste issues in Utah, including whether Utah should accept more hazardous waste, how Utah facilities compare financially to out-of-state facilities, what obligations Utah has to accept waste based on interstate agreements, how to long-term manage waste facilities, whether to impose additional or higher taxes on certain types of waste management and disposal, and whether to impose a proposed ban on class B and C waste disposal. (For additional information on the status of Envirocare of Utah's application to dispose of class B and C radioactive waste and on a proposed

*(Continued on page 9)*

## Cedar Mountain Proposal Discussed at Tooele County Meeting

In May, the Tooele County Planning Commission heard testimony on a proposal by Cedar Mountain Environmental to establish a new commercial low-level radioactive waste disposal facility. Cedar Mountain—which is headed by former Envirocare of Utah CEO Charles Judd—is proposing to site the facility on 315 acres of land in the county that sits immediately north of Envirocare of Utah's existing facility. The site is within the boundaries of the Tooele County Hazardous Waste Industries Zone. Cedar Mountain submitted a siting application to the Utah Division of Radiation Control on January 30, 2003. (See *LLW Notes*, January/February 2003, pp. 9, 17.)

According to the testimony presented, Cedar Mountain hopes to accept about 3 million cubic feet of class A waste per year—an increase of about 20 percent over the volume of waste currently coming in to Tooele County. Most of the waste would come from government cleanup sites. The proposed facility would create about 60 new jobs.

Cedar Mountain is seeking a temporary conditional use permit from the Planning Commission, which it needs in order to proceed with the required environmental studies. After the studies are completed, the company will need to get approvals from the state, the Tooele County Commission, the legislature and the Governor. In 1997, a similar proposal by another firm was rejected by the county on the basis that there was not a sufficient market need for two such facilities.

The commission has not, as of press time, made a decision on the temporary conditional use permit application.

## ***Rocky Mountain Compact/State of Colorado***

## Denver Imposes Additional Requirements re Disposal at Cotter

On June 3, Colorado Governor Bill Owens signed legislation that imposes additional requirements on future applications by the Cotter Corporation for state licenses, renewals and amendments concerning the processing, storage or disposal of certain radioactive materials at the company's Canon City mill. The legislation, HB 1358, represents compromises reached between Cotter Corporation and Colorado Concerned Citizens Against Toxic Waste. It took effect immediately upon the Governor's signature, although most of its requirements do not apply to the company's pending and somewhat controversial application to accept contaminated soils from a Maywood, New Jersey Superfund site.

The bill, amongst other things, includes provisions that do the following:

- ♦ expands the definition of radioactive waste under state law;
- ♦ requires applicants to reimburse the local board of county commissioners up to \$50,000 for costs associated with assessing the impact of a licensing or licensing amendment application;
- ♦ sets deadlines and time limits for the state to process licensing amendment and renewal applications;
- ♦ allows a licensed facility to maintain operations while undergoing relicensing;
- ♦ requires the Cotter Corporation to give the

*(Continued on page 9)*

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

### **Texas Bill re LLRW Disposal Facility Passes Legislature**

#### **Bill Sent to Governor for Final Approval**

The Texas House and Senate have reconciled differences in recently passed versions of H.B. 1567—proposed legislation that seeks to amend the 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—and have sent a final version to Texas Governor Rick Perry (R) for approval. The House approved the final amended version of H.B. 1567 last week, with the Senate approving it on May 26 by a vote of 24 to 7. The Governor has 20 days in which to sign or veto the bill. If he does not sign it by the end of the 20 days, the bill automatically becomes state law.

The legislation would allow for the creation of two privately run waste disposal facilities to be licensed as one site by the Texas Commission on Environmental Quality. One facility would 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 would dispose of commercial low-level radioactive waste. The legislation maintains, however, provisions in the Health and Safety Code limiting the disposal of waste at the commercial disposal facility to waste that is generated within the Texas Compact, subject to specified conditions. (See LLW Forum News Flash titled, "Bills Introduced in Texas That Would Allow for Siting of a Commercial/Federal Facility," March 11, 2003, for a detailed explanation of the bill's provisions, as originally introduced.) The legislation, nevertheless, defines "compact waste" to include

*(Continued on page 16)*

### **Texas Commission on Environmental Quality: Schedule of Activities**

#### **Planned Rulemaking Activities**

August 6, 2003	draft initial rulemaking planned to be proposed
December 6, 2003	initial rulemaking planned to be adopted
January 1, 2004	complete initial rulemaking to prepare for the acceptance of LLRW disposal license applications (other required rule-making to be initiated after January 1, 2004 milestone)

#### **Preliminary Milestones for Licensing Activities**

January 1, 2004	publish Notice for potential applicants
June 2004	accept applications for a 30-day period
July 2004	prepare administrative deficiencies notice
September 2004	administrative notice responses and review
March 2005	public meetings and selection of most meritorious application
April 2005	technical review of selected application
July 2006	publish draft license and hearing notice
September 2006	administrative hearing proceedings
September 2007	proposal for decision issued
December 2007	TCEQ Commissioners issue license or denial

*For additional information, go to <http://www.tnrc.state.tx.us/permitting/llrw>.*

### ***Southeast Compact***

## **The Southeast Compact Commission Announces the Richard S. Hodes, M.D. Honor Lecture Award: A New Awards Program to Recognize Innovation in the Management of Low-Level Radioactive Waste**

Beginning in February 2004, the Southeast Compact Commission for Low-Level Radioactive Waste Management will present an annual award to an individual, company, or organization that contributed in a significant way to improving the technology, policy, or practices of low-level radioactive waste management in the United States. The award recipient will present the innovation being recognized at a lecture during the Waste Management Symposium, WM '04 in Tucson, Arizona. The award recipient will receive a \$5,000 honorarium and all travel expenses will be paid.

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

The Richard S. Hodes, M.D. Honor Lecture Award was established to honor the memory of Dr. Hodes and his achievements in the field of

low-level radioactive waste management.

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

Ted Buckner, Associate Director  
Southeast Compact Commission  
21 Glenwood Avenue, Suite 207  
Raleigh, NC 27603  
919.821.0500  
[tedb@secompact.org](mailto:tedb@secompact.org)

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

*Nominations must be received by August 1, 2003.*

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## **Texas Ecologists Renamed US Ecology**

Effective May 1, a Robstown, Texas hazardous and industrial waste treatment, storage and disposal facility previously known as Texas Ecologists, Inc.—a subsidiary of American Ecology Corporation—was renamed US Ecology Texas. The facility, which has been in operation since 1973, provides services to industry and government customers in Texas and the southeastern United States.

In announcing the name change, American Ecology Corporation President and Chief Executive Officer, Stephen Romano, stated that, "[t]he US Ecology Texas name preserves our Robstown facility's proud Texas roots while better reflecting the integrated services offered by our disposal sites in Washington, Idaho, Nevada and Texas, which all now operate under the US Ecology banner." Romano appointed Robert Foye, a PhD with decades of experience in the environmental services industry, as Vice President and Facility Manager for US Ecology Texas.



### ***State of Michigan***

## **Big Rock Reaches Milestone**

The decommissioning of the Big Rock Nuclear Power Plant passed a milestone in May when the eighth and final cask of radioactive material was removed and placed at a specially created storage area nearby. The cask contains various small materials recovered from the plant's spent fuel pool. The other seven concrete casks house spent nuclear fuel from the facility, which ceased operations in 1997 after 35 years.

Big Rock engineers developed a "horizontal transfer system" to transfer the stainless-steel casks containing radioactive waste from their concrete overpacks to other overpacks in the unlikely event that an overpack in the storage area were to fail. The system will also be used to remove the spent nuclear fuel from the storage area to the transfer casks for eventual transport to permanent storage at the planned Yucca Mountain high-level waste facility in Nevada.

Big Rock officials hope to completely revert the site to a green field by 2012.

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*(Continued from page 5)*

ban of such disposal, see *LLW Notes*, November/December 2002, pp. 7-10.)

During the course of the study, members are expected to visit disposal facilities and uranium mills, review tax issues on various types of waste and facilities, and hold public hearings and solicit public comment. At the conclusion of the study term—which is currently scheduled to end on November 30, 2004—the task force will report to lawmakers and make recommendations on a variety of issues, including a list of recommendations for waste treatment policies, fees and taxes, as well as proposed legislation.

The next meeting of the task force is scheduled for Tuesday, June 17, at the Tooele County Courthouse auditorium. The meeting will follow a site-visit by task members of the Envirocare of Utah facility.

*For additional information about the task force members, future agendas and so forth, go to the Utah legislative website at <http://www.le.state.ut.us/asp/interim/Commit.asp?Year=2003&Com=TSKHWR>.*

*For additional information, contact Bill Sinclair of the Division of Radiation Control, Utah Department of Environmental Quality, at (801) 536-4255, or go to <http://www.deq.utah.gov/> and click on the icon that reads "Hazardous Waste Regulation and Tax Policy Task Force."*

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Canon City Public Library copies of materials acceptance reports when the company plans to receive radioactive materials;

- ◆ requires Cotter Corporation to follow certain environmental assessment and public meeting procedures on future license renewal or amendment submittals; and
- ◆ establishes parameters for the conducting of such public meetings.

Under the bill, Cotter Corporation must notify the state at least 60 days before it receives, processes or disposes of radioactive material. The state is then required to notify Fremont County Commissioners of Cotter's plan and there is a 30-day period allotted for written public comments before Cotter may proceed with accepting the shipment. Within 30 days of the close of the written public comment period, the state health department must confirm that the material Cotter proposes to receive falls within its license conditions. Once the department does so, no further state approval is needed.

***Alabama, Florida, Tennessee, Virginia and the Southeast Interstate Low-Level Radioactive Waste Management Commission v. State of North Carolina***

**North Carolina Files Supplemental Brief in Response to Solicitor General's Recommendation re Original Jurisdiction**

On May 1, 2003, the State of North Carolina filed a supplemental brief to the U.S. Supreme Court in regard to its ongoing dispute with the Southeast Interstate Compact Commission for Low-Level Radioactive Waste Management. In particular, the brief responded to an April 2002 brief from the U.S. Solicitor General which urged the Court to exercise its original jurisdiction in a lawsuit filed against North Carolina by the Southeast Compact Commission and four of its member states. (See *LLW Notes*, March/April 2002, pp. 14 – 16.) The lawsuit seeks the enforcement of sanctions against North Carolina, the compact's designated host state, for its failure to develop a regional low-level radioactive waste disposal facility. The Solicitor General had provided a brief on the issue of whether or not the Court should exercise its original jurisdiction in the action in response to an invitation from the Court.

**Background**

**The Petitioners' Motion** On June 3, 2002, the States of Alabama, Florida, Tennessee, and Virginia—as well as the Southeast Compact Commission—filed a “Motion for Leave to File a Bill of Complaint” and a “Bill of Complaint” in the U.S. Supreme Court against the State of North Carolina. The action, which accuses North Carolina of “failing to comply with the provisions

of North Carolina and the Southeast Compact laws and of not meeting its obligations as a member of the Compact,” seeks to enforce \$90 million in sanctions against the defendant state. It contains various charges against North Carolina, including violation of the member states' rights under the compact, breach of contract, unjust enrichment, and promissory estoppel. (See *LLW Notes*, May/June 2002, pp. 1, 11.)

*For specific arguments raised in briefs filed by the petitioners and respondent, see LLW Notes, July/August 2002, pp. 15-17.*

**Original Jurisdiction** Under Article III, Section 2 of the U.S. Constitution, the U.S. Supreme Court may exercise original jurisdiction over a judicial case or controversy between states. In determining whether or not to do so, the Court has generally considered two factors: (1) the “nature of the interest of the complaining State,” focusing mainly on the “seriousness and dignity of the claim,” and (2) “the availability of an alternative forum in which the issue tendered can be resolved.”

**Prior Filings** The Southeast Compact Commission filed a similar motion for leave to file a bill of complaint in the U.S. Supreme Court against the State of North Carolina on July 10, 2000. (See *LLW Notes*, July/August 2000, pp. 1, 16-18.) North Carolina filed a brief in opposition to the Commission's motion on September 11, 2000. (See *LLW Notes*, September/October 2000, pp. 20-22.) The Solicitor General of the United States filed an amicus brief in the action on May 30, 2001 in response to an October 2000 invitation from the Court. (See *LLW Notes*, May/June 2001, pp. 13–15.) In the brief, the Solicitor General asserted that the case does not fall within the Court's exclusive jurisdiction. Significantly, however, the Solicitor General concluded that the Court “would have exclusive jurisdiction over a suit brought by one or more of the States that are parties to the Southeast . . . Compact against North Carolina based on that State's alleged violations of the Compact.”

On June 25, 2001, the U.S. Supreme Court issued an order denying the Southeast Compact Commission's motion without ruling or commenting on the merits of the complaint itself. (See *LLW Notes*, July/August 2001, pp. 18 - 19.) The Commission, in conjunction with four member states of the compact, filed a new motion in June 2002. In response to an invitation from the Court, the Solicitor General filed a brief on the new motion in April 2002 in which it argued that the Court should exercise its original jurisdiction.

### **North Carolina's Supplemental Brief**

In its brief, the State of North Carolina asserts that, "[e]xtending this Court's original jurisdiction to include actions brought by a State for the benefit of a compact commission does not comport with established precepts limiting the exercise of original jurisdiction to cases that implicate important concerns of federalism and those involving the core sovereign interests of two or more States."

In support of its position, and in direct contrast to the Solicitor General's brief, North Carolina argues that the Southeast Compact Commission's claim for restitution does not implicate the direct interests of its member states. In this regard, North Carolina points out that the funds at issue were collected from nuclear waste generators and were never public funds of the treasuries of the member states. Moreover, North Carolina notes that, should the petitioners succeed in winning their case, the funds would be returned to the compact commission—not the member states directly. In regard to this latter argument, North Carolina states as follows:

If, as argued by the Solicitor General, the petitioning States are asserting their own rights under the Compact because they were individually harmed by North Carolina's failure to license and operate a regional waste facility, any such harm would not equate to the sum total of the funds provided by the Commission to

North Carolina during the siting process. Rather, any damages incurred by the four named plaintiff States would require calculation of the negative impact on each State's treasury resulting from North Carolina's inability to complete the facility.

North Carolina also rejects the Solicitor General's assertion that the Supreme Court, through its exercise of original jurisdiction, "presents the only realistic forum for adjudication" of the matter at hand. In this regard, North Carolina points out that, in its earlier brief on the original action filed solely by the compact commission, the Solicitor General argued that a state court would be an appropriate forum for this case. According to North Carolina, "[t]he addition of four States as plaintiffs does not diminish the availability of other forums to hear this case, and this procedural maneuver should not be accepted as a prototype for establishing . . . [original jurisdiction] in future cases where alternative forums are readily available." Indeed, in support of its position, North Carolina cites an ongoing action between the Central Interstate Low-Level Radioactive Waste Commission and the State of Nebraska. (See *LLW Notes*, September/October 2002, pp. 1, 15-17.) North Carolina notes that, in that case, the trial court awarded the compact commission over \$151 million in damages. Such an award, according to North Carolina, "plainly demonstrates that a judicial forum other than this Court can adjudicate claims against a State arising from an interstate compact."

Finally, in the conclusion of its brief, North Carolina expressly rejects the Solicitor General's recommendation that the Court require the parties to file cross-motions for partial summary judgment limited to the two questions of (1) the authority of the compact commission to impose monetary sanctions and (2) the enforcement of such sanctions against a state that has withdrawn from the compact before such sanctions were imposed. In regard to such recommendation, the State of North Carolina asserts the following:

While the Solicitor General is no doubt motivated by appropriate concerns for the efficient administration of justice, the suggestion simplistically narrows the matters in dispute and ignores the fundamental threshold issues that necessarily would be presented by North Carolina's Answer to the proposed Bill of Complaint. North Carolina's legal defenses to the proposed complaint and the relief requested therein would not necessarily be limited to the narrow issues drafted by the Solicitor General.

Although a ruling that the monetary sanctions are not authorized by the terms of the Compact would obviously dispose of the need for further proceedings in this case, this Court should not be misled into thinking that any other answer to the questions framed by the Solicitor General would obviate the need for the development of a record establishing the extensive factual background underlying this dispute and the resolution of numerous legal issues related to North Carolina's defenses to the Commission's claims.

Based on the above-stated reasons, the State of North Carolina asserts that the Court should deny the petitioners Motion for Leave to File a Bill of Complaint.

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among member countries and to provide incentives for member countries to take appropriate steps to bring their nuclear activities into compliance with general safety standards and practices. The first review meeting for members of the Joint Convention has been scheduled in Vienna, Austria for the month of November 2003.

Article 1 of the Joint Convention sets out the following three objectives for member countries:

*(Continued on page 14)*

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

### **Appellate Court Hears Arguments in Central Compact/Nebraska Dispute**

On June 12, the U.S. Court of Appeals for the Eighth Circuit heard oral arguments from attorneys for the Central Interstate Low-Level Radioactive Waste Commission and the State of Nebraska regarding a lawsuit that challenges the state's actions in reviewing US Ecology's license application for a low-level radioactive waste disposal facility in Boyd County. On September 30, 2002, the U.S. District Court for the District of Nebraska ruled in favor of the Central Interstate Low-Level Radioactive Waste Commission finding, among other things, that the state's license review process was "politically tainted" by former Governor Benjamin Nelson's administration. (See *LLW Notes*, September/October 2002, pp. 1, 15-17.) The court awarded the compact commission over \$151 million in damages. The state filed a notice of appeal on October 30, 2002.

On December 30, 2002, the State of Nebraska filed a legal brief arguing that the appellate court should reverse the lower court's decision because the judge made a number of errors—one of the most significant of which is claimed to be his denial of the state's request for a jury trial. In addition, the brief also challenges the legal reasoning adopted by the judge to support the large damages award and argues that sufficient facts simply did not exist to find that the state acted improperly or in "bad faith" in denying US Ecology's low-level radioactive waste disposal facility license in 1998. (See *LLW Notes*, January/February 2003, pp. 1, 10-15.)

The Central Commission filed its answer brief on February 3, 2003. In the brief, the Commission

argues that the appellate court should affirm the district court's decision. In support of its position, the Commission asserts that (1) the district court properly concluded that the Seventh Amendment does not guarantee a jury trial to a state in cases in which an interstate compact commission is required by the compact itself to sue one of the compact states for breach of its duties under the compact, (2) the district court's finding of "bad faith" on the part of Nebraska was not erroneous, (3) the district court did not err in declining to order as a remedy for Nebraska's bad faith performance under the compact the completion of a state administrative process which the court found to be a mere continuation of bad faith, (4) the district court did not err in awarding money damages to the Commission in light of Nebraska's waiver of sovereign immunity when it entered the compact, and (5) the district court did not err in awarding prejudgment interest. (See *LLW Notes*, January/February 2003, pp. 1, 10-15.)

Most of the arguments before the three-judge panel focused on the district court judge's refusal to grant a jury trial and on the calculation of the damages award. Denying the jury trial was a "fundamental legal error," according to the state's attorney. The state also asserted that the damages award must be revisited. The commission's attorney, on the other hand, argued that a jury trial was not required and that the damages award was appropriate.

*For additional background information, see LLW Notes, May/June 2001, pp. 1, 11-12. For information about a novel "equitable remedy" requested by the Central Commission in its final brief, including the appointment of a Special Master to head a license review completion process and the possible termination of Nebraska's regulatory authority over low-level radioactive waste, see LLW Notes, August/September 2002, pp. 14-15. For information about the district court's September 30 decision in favor of the Central Commission, see LLW Notes, September/October 2002, pp. 1, 15-17. For a copy of the court's September 30 decision, go to <http://www.ned.uscourts.gov/entopinions/index.html>.*

## ***State of Washington v. U.S. Department of Energy***

### **Court Halts DOE Shipments to Hanford**

In mid-May, a federal district court granted a request from the State of Washington to extend a temporary injunction against the shipment of transuranic wastes by DOE to the Hanford Nuclear Reservation until pending litigation over the wastes is resolved. The ruling is one of a series of recent developments in an escalating feud between the department and the state over who controls transuranic wastes at Hanford. In other developments, the department ordered its contractors to halt all cleanup work that could create mixed waste in response to an April 30 state administrative order that sets deadlines for DOE to deal with Hanford's transuranic wastes.

At issue is about 84,000 barrels of transuranic wastes currently buried at Hanford, plus additional transuranic waste scheduled to go to Hanford in the future. The state wants to negotiate with DOE a legally binding agreement concerning removal of these wastes, but DOE says that the state is not entitled to any legal control over transuranics. After the department pulled out of talks in late February, the state filed suit on March 4 seeking a halt to all transuranic shipments to Hanford until a timetable for dealing with the material can be agreed to by both sides. Subsequently, four environmental groups filed briefs in support of the state.

The court's May ruling leaves the injunction in place until the litigation is resolved.

***Southwest Research and Information Center v. New Mexico Department of Environmental Quality***

## **WIPP Appeal Dismissed as Moot as Closure Progresses**

On April 30, a three-year old court battle over a state regulatory permit for the Waste Isolation Pilot Plant was dismissed by the Supreme Court of the State of New Mexico as a result of the closure of the first large storage area at the site. The court dismissed the case as moot, at the request of the state Environment Department, since the permanent closing of the storage area rendered unnecessary any further review of the disputed permit provision.

The case involved an appeal filed in 2000 by an Albuquerque-based environmental group, the Southwest Research and Information Center, which contended that the state made a significant change in the facility's regulatory permit without having a required public hearing. In particular, the petitioner claimed that the state improperly issued a permit modification which allowed the storage of mixed wastes in an area holding solely radioactive wastes that had arrived before the original permit was issued in 1999. The state, however, asserted that the petitioner had misinterpreted the permit change. The Court of Appeals agreed with the state, ruling that no public hearing was required because the agency considered the permit change to be minor.

The storage area which was the subject of the dispute and which is now closed contains 39,000 drums of waste. WIPP plans to build 12-foot thick concrete walls to seal the two entrances to the area, which is one of eight planned for the site.

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- ♦ achieve and maintain a high-level of nuclear safety worldwide in spent fuel and radioactive waste management through the enhancement of national measures and international cooperation, including where appropriate, safety-related technical cooperation;
- ♦ ensure that during all stages of spent fuel and radioactive waste management there are effective defenses against potential radiological hazards so that individuals, society, and the environment are protected from the harmful effects of ionizing radiation, now and in the future; and
- ♦ prevent accidents with radiological consequences, and mitigate such consequences should they occur during any stage of management.

As part of the Joint Convention, member nations are expected to prepare a National Report that documents spent fuel and radioactive waste safety in their individual countries and explains how these comply with the terms of the Joint Convention. A reporting format and content were agreed to by members of the Joint Convention in December 2002.

The U.S. has completed its first National Report prepared pursuant to the Joint Convention. The report describes American radioactive waste management in both the commercial and government sectors, provides information on spent fuel and waste management facilities, details spent fuel and waste inventories, and discusses ongoing decommissioning projects. The report also provides detailed information on spent fuel and radioactive waste management safety, as well as imports/exports (transboundary movements) and disused sealed sources. It concludes that the United States is in compliance with the Joint Convention and that an "extensive set of laws and regulatory structure exist to ensure safety of spent fuel and radioactive waste management in the U.S."

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### ***U.S. Department of Energy***

## **Contractor Report Recommends Further Analysis of Yucca Mountain Aircraft Threat**

A recent report by Bechtel SAIC, a contractor for the U.S. Department of Energy's planned Yucca Mountain high-level radioactive waste repository, recommends additional analysis of the threat posed by aircraft flying within 30 miles of the site. DOE officials, however, are downplaying the threat, asserting that the department does not believe potential plane crashes—either from the Nellis Air Force Base or commercial airlines—are a realistic obstacle to obtaining a facility license from the U.S. Nuclear Regulatory Commission.

The danger posed by military flights was recently cited by the Atomic Safety Licensing Board as a reason for recommending denial of a proposal to build a spent fuel storage facility on the Goshute Indian reservation in Utah. (See *LLW Notes*, March/April 2002, pp. 19-20.) Department officials point out, however, that the Utah proposal calls for an above-ground storage facility, whereas the proposed Yucca Mountain facility would be underground. In addition, DOE officials note that “[a]bove-surface work at the Nevada Test Site has coexisted with military training for years.”

DOE plans to apply to the NRC for a facility license for the Yucca Mountain site by late 2004 and hopes to have the repository open by 2010. Plans call for the entombment of 77,000 tons of commercial, industrial and military radioactive waste 1,000 feet underground.

## **DOE Considers Alternative Waste Treatment Technologies for Hanford**

The U.S. Department of Energy is studying various technologies for treating low-activity and mixed radioactive waste, including the possibility of turning some of it into stone. The department already has plans to use a previously developed technology that turns radioactive waste into a glass-like material, known as vitrification. Indeed, DOE is constructing a \$5.7 billion vitrification plant at the Hanford reservation in the State of Washington to deal with nuclear waste from Hanford's underground tanks. Unfortunately, the plant will not be able to process by a 2028 deadline all of the 53 million gallons of waste generated by 50 years of plutonium production for nuclear weapons. The stone project seeks to convert up to 10 million gallons of the waste into a form that will be safely contained for at least 1,000 years.

In addition to stoning, researchers for DOE are looking at two other supplemental technologies. The first, bulk vitrification, involves the pouring of waste into a container about half the size of a shipping container that holds soil and then using electrodes to turn the mixture into glass. The second, steam reformation, involves the use of steam and chemicals to turn wastes into pebble-sized crystals.

To date, comparisons have not been done on the quantity of waste or costs of each method. However, researchers expect to make a recommendation on the supplemental technologies to DOE in late September. If the department chooses to use one of the supplemental technologies, it must get approval from regulators as the Tri-Party Agreement that covers Hanford's environmental cleanup now calls for all tank wastes to be vitrified.

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

### **Whitman Steps Down From EPA Post**

In late May, Environmental Protection Agency Administrator Christine Todd Whitman announced that she is 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 is resigning because she wants to spend more time with her family. Her resignation becomes effective June 27. As of press time, Whitman's successor—who will require Senate confirmation—had not been named.

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waste that is generated in a host or party state, as well as waste that "is not generated in a host state or a party state but has been approved for importation to this state by the compact commission under Section 3.05 of the compact . . ."

Under the final version of the bill, as approved by both the House and Senate, the federal facility could be licensed to take up to 6 million cubic yards of low-level radioactive waste. The earlier Senate-passed version limited the disposal of Class B and Class C waste at the federal facility to a combined maximum of 5,000 cubic yards.

However, under a negotiated settlement with the House, the final version of the bill raised the total to 600,000 cubic yards of Class B and Class C waste allowed at the federal facility.

A copy of the final version of the bill as passed by both the House and Senate will eventually be placed on-line at

[http://www.capitol.state.tx.us/tlo/legislation/bill\\_status.htm](http://www.capitol.state.tx.us/tlo/legislation/bill_status.htm)

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

### **NRC Licensing Board Finds PFS Financially Qualified and Rules Seismic Risks Acceptable**

In late May, the Atomic Safety and Licensing Board—an independent judicial arm of the U.S. Nuclear Regulatory Commission—issued three separate decisions (two partial initial decisions and a memorandum and order granting summary disposition) finding that the Private Fuel Storage (PFS) consortium is financially qualified to construct, operate, and decommission a proposed spent nuclear fuel storage facility on the Skull Valley Band of Goshutes Indian Reservation in Utah. Earlier that same month, the board issued a separate decision holding that the proposed facility meets the Commission's safety standards that protect against potential earthquake risks. In so doing, the board rejected arguments put forth by the State of Utah that the facility's design is inadequate to withstand the seismic forces it is likely to encounter. The consortium has proposed to construct and operate the facility until permanent storage becomes available at the planned Yucca Mountain, Nevada high-level radioactive waste disposal facility.

The licensing board's decisions follow a formal hearing held in mid-2000 at which the board received evidence on a number of issues challenging the PFS proposal. Among these was challenges to the consortium's financial qualifications and arguments that the design specifications of the proposed facility do not provide adequate safety assurances in the event of a major earthquake.

The licensing board's decisions, while finding that PFS is financially qualified to construct and operate the proposed facility and that seismic risks are acceptable, do not provide for the issuance of



a license because a March 10 decision by the board found that the probability of an accidental crash due to the operations of a nearby military facility is too high. (See *LLW Notes*, March/April 2003, p. 19.) Both PFS and NRC's technical staff have requested that the Commission review that board ruling. In addition, PFS continues to seek approval to proceed with a much smaller facility that it contends would reduce the risk of an aircraft crash to permissible levels. (See *LLW Notes*, March/April 2003, p. 20.) In addition, the environmental aspects of the proposed rail line down Skull Valley that would serve the facility must be resolved before a license can be issued.

The licensing board's 372-page decision on seismic issues are available from the NRC's web site at <http://www.nrc.gov/what-we-do/regulatory/adjudicatory/pfs-seismic.pdf>. In addition, certain portions of the licensing board's decisions on PFS financial qualifications will eventually be publicly available after redaction of those portions considered to be proprietary. The abridged versions will be available through the NRC's Agencywide Documents Access and Management System (ADAMS) at <http://www.nrc.gov/reading-rm/adams.html>.

*For background information on the PFS/Goshute proposal, see LLW Notes, July/August 2000, p. 26.*

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The report was primarily prepared by the U.S. Department of Energy, with assistance from the U.S. Environmental Protection Agency, the U.S. Nuclear Regulatory Commission, and the U.S. Department of State through the Joint Convention Interagency Executive Steering Committee and Working Group.

*A copy of the National Report can be found on-line at [http://www.em.doe.gov/integrat/National\\_Report\\_05-02-03\\_1.pdf](http://www.em.doe.gov/integrat/National_Report_05-02-03_1.pdf). A copy of the Joint Convention is electronically available from the International Atomic Energy Agency.*

## NRC Renews Licenses for Peach Bottom Atomic Power Station

The U.S. Nuclear Regulatory Commission recently announced that it has renewed the operating license of the Peach Bottom Atomic Power Station, Units 2 and 3, located about 18 miles south of Lancaster, Pennsylvania, for an additional 20 years. The plant is operated by Exelon Generation Company, which originally submitted the license renewal application on July 2, 2001. The renewals extend the licenses of Peach Bottom 2 to August 8, 2033, and of Peach Bottom 3 to July 2, 2034.

As part of its review process, NRC conducted an environmental review—issued in January 2003—that found no impacts that would preclude renewal of the license for environmental reasons and a safety evaluation report—issued in February 2003—that found no safety concerns that would preclude license renewal because the licensee had demonstrated the capability to manage the effects of plant aging. (Copies of these documents can be found at <http://www.nrc.gov/reactors/operating/licensing/renewal/applications/peach-bottom.html>.) In addition, NRC conducted inspections of the plants.

On March 14, 2003, the Advisory Committee on Reactor Safeguards issued its recommendation that the operating licenses be renewed. The committee is an independent body of technical experts that advises the Commission. The committee's report can be found at <http://www.nrc.gov/reading-rm/doc-collections/acrs/letters/2003/5002027.html>.

### NRC Regulations/Status of Renewals

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

To date, in addition to the Surry and North Anna renewals, NRC has approved license extension requests for fourteen other reactors on seven sites—the Calvert Cliffs Nuclear Power Plant near Lusby, Maryland; the Oconee Nuclear Station near Seneca, South Carolina; the Arkansas Nuclear One plant; the Edwin I. Hatch plants near Baxley, Georgia; the Turkey Point nuclear reactors near Homestead, Florida; the North Anna Power Station near Richmond, Virginia; and the Surry Power Station near Newport News, Virginia. (See *LLW Notes*, May/June 2002, p. 19.) NRC is currently processing license renewal requests for other reactors. 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 Guidance Document**

NRC approved three guidance documents in July 2001 which describe acceptable methods for implementing the license renewal rule and the agency's evaluation process. (See *July/August 2001*, p. 26.) The documents are intended to, among other things, speed up the renewal process.

In addition, an existing NRC document—"Generic Environmental Impact Statement for License Renewal of Nuclear Plants" (NUREG 1437)—assesses the scope and impact of environmental effects that would be associated with license renewal at any nuclear power plant site.

## **NRC Issues Final Rule re Release of Parts of Reactor Sites for Unrestricted Use**

The U.S. Nuclear Regulatory Commission recently published amendments to its regulations to standardize the process for allowing nuclear power plant licensees to release parts of their facilities or sites for unrestricted use if they are able to demonstrate that any residual radiation on the property is within regulatory limits. Current NRC regulations do not directly address the release of part of a reactor facility or site prior to NRC approval of a license termination plan, which describes the steps to be followed in order to decommission a reactor facility and to satisfy radioactive exposure criteria in NRC regulations in order to allow release of the site for other uses.

Several NRC reactor licensees have recently expressed interest in releasing parts of their sites. The final rule is directed at operating and decommissioning reactor facilities and does not include other nuclear facilities, such as those engaged in fuel fabrication. Under the new rule, an NRC licensee that wants to release part of a site for unrestricted use must demonstrate that any residual radiation is within regulatory limits by conducting radiological surveys and must document the history of all activities conducted on the property to ensure the accounting of all sources of residual radiation. Upon receipt of a proposal for a partial site release, the NRC will publish a public notice seeking comment and offer an opportunity for a public meeting. It may also conduct independent reviews and inspections, if deemed necessary, to ensure that strict radiological criteria are met before granting approval for a partial site release.

According to its press release, the NRC "believes that the rule will help maintain safety by establishing a consistent process for considering partial site releases."

Details about the proposed rule were published in

the *Federal Register* on September 4, 2001. Minor changes were made as a result of comments received. The rule will become effective 30 days after its publication in the *Federal Register*.

### Commissioner Dicus Receives Radiation Protection Award

On May 4, the Conference of Radiation Control Program Directors awarded NRC Commissioner Greta Joy Dicus with the Gerald S. Parker award—the highest award bestowed by the conference on individuals for exemplary efforts in the area of radiation protection. The award—which was given at the 35<sup>th</sup> annual national conference in Anaheim, California—recognizes Dicus for her distinguished career both at the state and federal level in the field of radiation protection, her significant contributions to the CRCPD, her consistent support of state radiation control personnel and the role that they play in resolving radiation protection issues at both the state and national levels.

Since February 1996, Dicus has served two terms as a Commissioner at the NRC, including a period of time as Chair. Her current term expires at the end of June. Prior to joining the NRC, Dicus served as a Presidential appointee member of the USEC Board of Directors, as Director of the Division of Radiation Control and Emergency Management at the Arkansas Department of Health and as former Chair of the Central Interstate Low-Level Radioactive Waste Compact Commission.

### NRC Issues New Security Rules for Nuclear Plants

In response to heightened terrorism threats, the U.S. Nuclear Regulatory Commission recently issued three orders to increase protection requirements for reactors, improve training for guards and address potential fatigue of security personnel via limited work hours.

One of the orders involves the so-called “design basis threat” or DBT, a controversial requirement that specifies exactly what type of terrorist or other attacks plant guards must be able to repulse. Specific details of the design basis threat are being kept secret by the NRC, but the agency said that it represents “the largest reasonable threat against which a regulated private security force should be expected to defend under existing law.” Federal, state and local response teams are expected to supplement the licensee’s guard force for threats that go beyond the level established in the design basis threat order. The nuclear industry had previously expressed concerns about the design basis threat order, arguing in response to an earlier draft that the order would significantly increase costs to nuclear operators while failing to provide needed government assistance for safeguarding plants. Indeed, industry critics have said that compliance with the draft order could cost the industry as much as \$2 billion in initial upgrades. They contended that the draft order needed to assign greater responsibility to the federal government for protecting plants from terrorist attacks. On the other hand, industry critics have asserted that the revised order was written with too much input from industry and have complained about its secrecy.

A second order, which imposes tighter controls on the hours worked by plant security guards, responds to critics who charge that some guards have been driven to fatigue by long hours—as many as 70 to 80 per week—following the September 11 attacks. The third order imposes more robust training requirements for security personnel including, among other things, more frequent arms training for plant security officers.

In regard to plant security, newly appointed NRC Chair Nils Diaz recently stated that, “[t]he NRC intends to continue working closely with the Department of Homeland Security and other federal agencies, as well as with state and local law enforcement and emergency planning officials to ensure an overall integrated [security] approach . . .”

## NRC Seeks Public Comment on Additional Guidance for Early Site Permit Applications

The U.S. Nuclear Regulatory Commission has developed additional guidance for its draft review standard for early site permit (ESP) applications for new nuclear power plants. The additional guidance—which is now available for interim use and public comment—covers quality assurance and accident analysis.

The ESP process is intended to address site-related issues regarding possible future construction and operation of a nuclear power plant at a site selected by an applicant. The review standard is intended for use by NRC staff when reviewing an ESP application, as well as for use by potential applicants and other stakeholders as guidance for the information that the staff needs in order to perform its review. The final version of the review standard is expected to be issued by the end of the year.

The draft review standard can be found on the NRC's Agencywide Documents Access and Management System at <http://www.nrc.gov/reading-rm/adams.html>. Comments on the draft review standard should be sent to: Director, New Reactor Licensing Project Office, Office of Nuclear Reactor Regulation, Mailstop 0-4D9A, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Comments are due by June 13 and may also be submitted electronically at [esprs@nrc.gov](mailto:esprs@nrc.gov).

*For additional information, please contact Michael Scott, Project Manager, at (301) 415-1421 or via e-mail at [mks3@nrc.gov](mailto:mks3@nrc.gov).*

## NRC Proposes Amending Regulations for Structures, Systems and Components

The U.S. Nuclear Regulatory Commission is proposing to amend its regulations to revise certain regulatory controls for structures, systems and components (SSC) at nuclear power plants based on their safety significance. Under current regulations, conservative safety margins, strict procedural controls and multiple safety systems are used to establish defense-in-depth for the protection of the public health and safety. The regulations also call for special regulatory controls—including rigorous design qualifications, record-keeping, maintenance and testing requirements—to ensure that SSC's that are deemed necessary to safely shut down a nuclear reactor and prevent off-site releases function effectively during and after an accident.

NRC has recently determined that some of these requirements provide only minimal contribution to safety, thereby possibly focusing NRC staff and licensee resources on issues of minor safety significance. The proposed changes enable nuclear plant licensees to more precisely determine the safety significance of the SSC's and to focus on those deemed very important to safety. Accordingly, if licensees choose to use the proposed alternative approach, some SSC's of "low safety significance" would be subject to less stringent safety requirements than currently exist, whereas some SSC's of greater significance would now be subject to new requirements. The idea is to allow both nuclear plant licensees and the NRC to more efficiently focus their resources on issues of greater safety significance.

In addition to the proposed rulemaking, NRC staff plan to issue a draft regulatory guide for public comment. Interested persons may submit written comments on the proposed amendments

*(Continued on page 22)*

## Senate Bill Would Require DOE to Develop Greater-Than-Class C Disposal Facility

On May 13, Senator Daniel Akaka (D-Hawaii) introduced S. 1045—legislation that seeks to require the U.S. Department of Energy to move forward on siting a permanent disposal facility for greater-than-Class C low-level radioactive waste. Among other things, the proposed bill would require DOE to designate an office to take responsibility for siting the facility and to report to Congress on the status of the project. The bill was introduced in response to a May 13 General Accounting Office report that found that DOE has not yet completed the first step, preparation of an environmental impact statement, toward siting such a facility. In addition, the GAO report—which was requested by Akaka—found that DOE’s Office of Environmental Management has not made the project a high enough priority and that space is running out at temporary storage facilities for these wastes.

Under the Low-Level Radioactive Waste Policy Act and its 1985 amendments, DOE is responsible for providing disposal for all greater-than-Class C waste—including sealed sources that are no longer wanted by their owners. While the department has not sited a facility for these wastes, its Off-Site Source Recovery Project is recovering and storing some of this material. However, there is not enough storage space to handle all of the material being recovered by DOE.

Under Akaka’s proposed bill, termed the Low-Level Radioactive Waste Act of 2003, DOE would be required to designate an existing office within the department to take responsibility for siting a greater-than-Class C disposal facility. The department would also be required to provide a report to Congress detailing what steps need to be taken to create the repository and how the department plans to proceed with preparing an

environmental impact statement. The report would also include an estimate of the costs of all of the actions. DOE would also be required to submit to Congress, by the end of 2003, a report detailing how the department plans to ensure the continued recovery and storage of sources pending the opening of a permanent repository.

In a May 15 statement, DOE noted that it has “significantly enhanced its efforts to aggressively secure and recover radioactive sources” since the September 11, 2001 terrorist attacks. The department asserted that the GAO report is flawed because it failed to recognize that the Off-Site Recovery Project is fully funded “to identify and recover all the sealed sources that the department and the [Nuclear Regulatory Commission] have identified as priorities.” In that regard, DOE has had meetings with NRC to address, among other things, the potential technological methods that could be used to tag and monitor sources in use, storage, or transit, as well as actions to secure and dispose of unsecured, excess and unwanted sources.

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## U.S. Senate Rejects Attempt to Strip Federal Loan Guarantees for New Nuclear Power Plants from Energy Legislation

On Tuesday, June 10, the U.S. Senate narrowly defeated by a vote of 50 to 48 a bipartisan effort to remove language from comprehensive energy legislation that authorizes up to \$30 billion in federal loan guarantees to assist the nuclear power industry in building up to a half dozen privately-owned, advanced design nuclear power plants to produce 8,400 megawatts of power. The plants are expected to cost about \$3 billion each. The guarantees can be found in Senate Bill 14, which contains a broad package of pro-nuclear measures including a proposal for the government to build a \$1.1 billion reactor to make hydrogen, the

extension of a cap on the nuclear industry's liability in accidents, and the appropriation of \$865 million for research into reducing nuclear waste. The amendment to strip the legislation of the federal loan guarantees—as well as to strike a provision in the bill which authorized the federal government to enter into agreements to purchase power from the nuclear reactors, even at above market rates—was offered by Senators Ron Wyden (D-OR) and John Sununu (R-NH).

Critics of the federal loan guarantee provision argue that it would “provide an unprecedented subsidy to a mature, established industry” and that it unfairly insulates nuclear developers against risk by assuring them subsidies even if no power is ultimately produced. They also argue that it poses major risks to taxpayers and could cost them as much as \$16 billion if the projects fail.

Supporters—including Senator Pete Domenici (R-NM), a passionate supporter of nuclear power and Chair of the Senate Energy and Natural Resources Committee—contend that the federal loan guarantees would support the creation of smaller, cleaner and safer nuclear plants that will help to increase the nation's energy security, diversify the U.S. electric generation portfolio and provide new energy sources without increasing air pollution. Supporters also point out that Senate Bill 14 also contains subsidies for other industries, including coal and oil and gas.

Following the debate, the Nuclear Energy Institute issued a statement saying, in part, that the Senate vote represented, “an important step forward for a secure energy future and clear recognition of the myriad benefits that nuclear energy provides to the American people.”

The House energy legislation, which was passed in April, does not currently contain a provision for federal loan guarantees for new nuclear power plants. The White House has not taken a position on the issue, although President Bush has expressed support for expanding nuclear power.

Currently, 103 nuclear power plants generate one-fifth of the nation's electricity. No new nuclear plants have been built since the 1970's, although several companies have recently expressed an interest in building new-design reactors in the near future.

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to NRC regulations within 75 days after publication of the *Federal Register* notice. The comments should be addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or submitted via the agency's interactive rulemaking web site at <http://ruleform.llnl.gov>.

### NEI Re-Elects Chair

The Nuclear Energy Institute recently announced the re-election of Entergy Corporation President Donald Hintz as board Chair for a one-year term. In addition, NEI elected three new members to its Executive Committee:

- ♦ Lewis Hay—Chair, President and Chief Executive Officer of FPL Group, Inc.;
- ♦ Robert McGehee—President and Chief Executive Officer of Progress Energy, Inc.; and
- ♦ Richard Muench—President and Chief Executive Officer of Wolf Creek Nuclear Operating Corporation.

In addition, at its annual meeting, NEI re-elected Glenn McCullough, Chair of the Tennessee Valley Authority, and William Post, Chair and Chief Executive Officer of Pinnacle West Capital Corporation, to the Executive Committee.

## Obtaining Publications

### 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