

## *Nuclear Regulatory Commission*

### **NRC Determines to Develop Proposed Regulation on Control of Slightly Radioactive Solid Materials**

The U.S. Nuclear Regulatory Commission has announced that it is in the process of developing a proposed regulation on the control of slightly radioactive solid materials—such as equipment, metals, concrete, soils, trash and furniture—originating at licensed nuclear facilities. NRC plans to use an "expanded participatory approach" in the development of the regulation, including seeking broad public participation and engaging diverse viewpoints. The agency has also said that it will consider a wide range of alternatives to the proposed rule, including

- (1) continued use of the current "case-by-case" approach to control the release of slightly contaminated solid material;
- (2) recycling (possibly into consumer products) of contaminated, but acceptably safe, solid materials;
- (3) restriction of the release of material to only certain uses or destinations (such as industrial uses or landfills) where the potential for public exposure is small; and
- (4) requiring permanent disposal — i.e., no release of such material for other uses.

Presently, NRC decisions on the release of solid materials are made on a case-by-case basis. In a press release on the issue, NRC states that it is amending its regulations "to provide clearer requirements using a rulemaking process which invites public comment and suggestions." Factors which may be considered in the rulemaking include

- (1) protection of public health and safety and the environment;
- (2) public confidence in the decision; and
- (3) the regulatory and economic impact on stakeholders.

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The Low-Level Radioactive Waste Forum, Inc. is dedicated to the goals of educating policy makers and the public about the management and disposal of low-level radioactive wastes, and fostering information sharing and the exchange of views between state and compact policy makers and other interested parties.

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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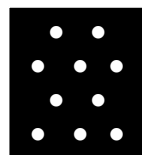
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## Key to Abbreviations

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



# LLW Forum: MIMS Task Force Makes Progress; Brokers/Processors Directory Questionnaires Distributed

In 2002, the Low-Level Radioactive Waste Forum, Inc. undertook two new ventures using, in part, funds from a grant provided by the U.S. Department of Energy. First, the LLW Forum determined to develop—in conjunction with the Southeast Interstate Low-Level Radioactive Waste Management Compact Commission—a national directory of brokers and processors. In addition, the organization created a task force to work with DOE, facility operators, and MACTEC (a DOE contractor) toward resolving outstanding issues about the Manifest Information Management System.

### MIMS Task Force

The MIMS task force was established at the September meeting of the LLW Forum in Sacramento, California. After the meeting, a copy of the MIMS Data Dictionary was sent out to all LLW Forum members and supporters. In an effort to determine if there are data elements which could be eliminated, thereby hopefully reducing the associated costs of running MIMS, each recipient was asked to indicate which elements are deemed necessary, which are deemed useful, and which are deemed non-important.

**Questionnaire Responses** Unfortunately, there was no consensus amongst the responses that were received. In addition, things were learned during the response-gathering process which indicated that the task force would need to change its course of action. Specifically, it became clear that

- (1) the data comes from the uniform manifest;
- (2) the programming for producing the data in its present form is complete;

- (3) the cost to produce the data now is minimal; and
- (4) the cost of changing the data request could be substantial.

**Conference Call** On December 5, a conference call was held with LLW Forum staff and officers, facility operators, and DOE's contractor to discuss the questionnaire results and future directions for MIMS. During the conference call, MACTEC reported that it has received data from Envirocare through September 2002 and has identified some non-conformity issues with the numbers—specifically, resubmitted data shows somewhat different activity and volume levels than that currently listed on MIMS. MACTEC and Envirocare have agreed to work together to figure out the reason for the discrepancies and to reconcile the numbers. MACTEC reported that it has received data from Barnwell through September 2002, but has not yet had an opportunity to review it. MACTEC reported that it has not yet received FY 2002 data (9/01 - 9/02) from US Ecology. Upon hearing the news, the US Ecology representative agreed to check on the status of the data and to make sure that it gets transmitted to DOE/MACTEC shortly.

Some respondents to the initial survey sent out by the LLW Forum indicated that they would like additional information from MIMS. The issue was discussed during the conference call. All three operators agreed to provide LLW Forum staff with the name and contact information of a person whom can be contacted by state and compact representatives to discuss "additional information" requests.

Conference call participants also discussed contingency planning in the event that DOE discontinues funding for MIMS.

**Next Steps** All parties agreed to continue to work cooperatively to ensure that MIMS continues to operate in the future. In addition, DOE has appointed a representative—Linda Suttora—who is working with LLW Forum staff on the request for DOE funding for MIMS for 2003.



*If you have any questions or need additional information, please feel free to call Stanley York of the Midwest Compact at (608) 831-5434 or Todd Lovinger of the LLW Forum at (202) 265-7990. Thank you.*

### **Brokers/Processors Directory**

The LLW Forum determined to work with the Southeast Compact Commission on the directory project at its March 2002 meeting in Charleston, South Carolina.

**The Directory** The goal is to develop a national directory of brokers and processors for use by compacts, states, federal agencies and others to provide information to generators seeking to treat, process and otherwise manage their waste in preparation for ultimate disposal. The LLW Forum does not intend to endorse any of the companies listed in the directory, but rather intends to provide information about them as a service to its members and supporters. The directory is expected to be available electronically and in hard copy. An interactive search engine may be included to assist users.

**Questionnaires** The LLW Forum has hired a subcontractor to assist in the development of the directory and its web-based programming. In November, a questionnaire was developed and finalized for distribution to potential listees. The questionnaire solicits various information for inclusion in the directory, such as general contact data; services offered; waste streams accepted; waste form requirements and waste acceptance criteria; permits and licenses; and radionuclide limitations or restrictions. The questionnaire is currently being distributed to various brokers and processors. Once responses are received, the data will be input and the directory will be built.

*For additional information about the directory, please contact Todd Lovinger of the LLW Forum at (202) 265-7990 or Ted Buckner of the Southeast Compact at (919) 821-0500.*

## **Spring 2003 LLW Forum Meeting to be Held in Austin, Texas**

The spring meeting of the Low-Level Radioactive Waste Forum, Inc. will be held in Austin, Texas on March 17 and 18, 2003. The meeting, which is being cosponsored by the State of Texas, will be held at the Omni Austin Hotel Downtown. A meeting of the LLW Forum's Executive Committee will be held on the evening of Sunday, March 16, at the same location.

**Attendance** Attendance at LLW Forum meetings is open to everyone. Registration is free for members of the LLW Forum and there is a \$500 fee for non-members.

**Reservations** A block of 35 rooms has been reserved for meeting attendees at the special rate of \$80.00 + tax per night for a single and \$110.00 for a double. There is room availability for the day after the meeting at the same rate. Reservations must be made by Sunday, February 23, to obtain the special rate. Reservations can be made by calling (800) 843-6664. *Please be sure to ask for a room in the LLW Forum block.*

**Registration** Attendees must register for the meeting. In order to do so, please go to the LLW Forum's web site at [www.llwforum.org](http://www.llwforum.org) to obtain a registration form.

*For additional information about the meeting, please contact Todd D. Lovinger—the LLW Forum's Management Contractor—at (202) 265-7990.*



### *Atlantic Compact/New Jersey*

## New Jersey Voices Objections to Corps' Maywood Cleanup Plans

The State of New Jersey is objecting to parts of the U.S. Army Corps of Engineers' plan to clean up thorium-tainted soil at a Maywood, New Jersey Formerly Utilized Sites Remedial Action Program (FUSRAP) site. (See *LLW Notes*, September/October 2001, pp. 15-16.) In particular, the New Jersey Department of Environmental Protection is concerned about the Corps' plan to use high-tech machinery to sift through the soil at the Maywood site and extract contaminants, which would then be sent out of state for disposal. Remaining soil would be kept at the site.

In an October 8 letter to the Corps, a state DEP official complained, amongst other things, that the Corps is not recognizing state standards for

*(Continued on page 11)*

## LLW Forum Membership Expands; 2003 Invoices Due

The LLW Forum, Inc. is pleased to announce that its membership dues and subscription rates will remain unchanged in 2003. The LLW Forum was able to avoid increasing its fees due to the continued success of the organization and consistent growth of its membership and subscription base. Most recently, the LLW Forum welcomed US Ecology to its list of subscribers.

Invoices for 2003 membership dues and subscription fees were sent out in October. Payment is due by January 15, 2003. If you have not yet made payment, please do so at your earliest convenience in order to avoid a disruption in services.

*For additional information, please contact Todd Lovinger at (202) 265-7990.*

### *Atlantic Compact/South Carolina*

## Barnwell Multi-Year Disposal Commitments Solicited

The South Carolina Budget and Control Board recently sent out letters suggesting that, beginning in July 2004, it may be more difficult for generators to gain access to the Barnwell low-level radioactive waste disposal facility if they do not enter into standard multi-year disposal commitments. To date, the board has entered into such commitments with utilities representing 24 nuclear power plant units and several other large generators.

According to the letters, Barnwell is believed to be on track this fiscal year to receive 70,000 cubic feet of waste—the statutory limit. The letters go on to say that the board “still believe[s] that for this fiscal year demand for disposal capacity will approximate supply and we will be able to continue accepting waste on a first-come, first-served basis through June 30, 2003, without access restrictions.”

In terms of future capacity, the letter states as follows:

Given the volume caps in state law, and commitments already in place and in the latter stages of discussion, we estimate that we have the volumes of uncommitted capacity shown in the table below. From these available volumes we would like to set aside some small amount for acceptance of sealed sources in situations where other alternatives for disposition are not available.

FY03/04	5,800 cubic feet
FY04/05	29,500 cubic feet
FY05/06	26,800 cubic feet
FY 06/07	23,800 cubic feet
FY07/08	17,800 cubic feet

*(Continued on page 7)*



### ***Central Midwest Compact/Kentucky***

## **Maxey Flats Cleanup Nearly Complete**

The multimillion dollar cleanup of Maxey Flats, a 280 acre former low-level radioactive waste disposal site in Kentucky, is nearly complete. Closed in 1978, Maxey Flats is one of the largest Superfund sites in the Southeast, with an expected total cleanup cost of up to \$100 million.

The cleanup began in 1996, under close supervision by the U.S. Environmental Protection Agency and the Kentucky Natural Resources Cabinet. Waste has been removed from the site and a cap installed. The state will soon take over environmental monitoring responsibility, maintaining the cap for at least 100 years.

The site contains 4.75 million cubic feet of low-level radioactive waste. Originally, the waste was buried in trenches, which were covered with soil. The trenches leaked however, requiring contaminated water to be pumped out, mixed with cement and additives, and poured into bunkers to solidify. A lining is expected to be placed over the bunkers this spring.

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Under South Carolina law, the volume of radioactive waste that can be accepted at Barnwell is reduced annually through June 30, 2008. After that date, Barnwell may only accept waste generated within the Atlantic Compact region.

*For additional information, please contact Bill Newberry, Director of the South Carolina Radioactive Waste Disposal Program, at (803) 737-8037.*

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

## **Utah Radioactive Waste Tax Initiative Defeated in November 5 Elections**

On November 5, Utah voters defeated a state-wide ballot initiative that sought, among other things, to impose substantial additional taxes on the disposal of out-of-state low-level radioactive waste at Envirocare and to prohibit the disposal of Class B and C radioactive waste within the state (Citizen's State Initiative Number 1—the Radioactive Waste Restrictions Act). The initiative was intended to generate additional monies to benefit schools and the homeless, among others. However, critics argued that it was poorly crafted, unconstitutional and amounted to an unfair tax on a single company.

The initiative failed by a vote of nearly 2 to 1—meaning that more than two votes were cast against the initiative for every one vote in favor of it. The failure was attributed largely to an intense opposition campaign that included endorsements from state legislators and dozens of other elected officials and which was labeled "the most expensive citizens' initiative ballot in state history." Indeed, just one week before the election, local press were reporting that the opposition had spent nearly \$2.9 million in their attempt to defeat the measure (the great majority of which came from Envirocare of Utah), whereas initiative proponents had only spent a little over \$700,000.

Hugh Matheson—leader of the campaign opposing the initiative—called the initiative's defeat "a resounding 'no' to corporate warfare by initiative." Matheson continued by stating that "[p]eople don't like the idea of taxing one company by initiative . . . There's just something inherently unfair about that."

Initiative proponents, on the other hand, blamed its failure on poor funding and what they termed



## States and Compacts *continued*

the opposition's "strategy of confusion." Susan Kuziak, President of the Utah Education Association which strongly supported the initiative, stated that proponents never "expected it to be a cakewalk."

### Background

**General** The initiative, which promotes draft legislation titled the "Radioactive Waste Restrictions Act," is sponsored by Utahns for Radioactive Waste Control and others. Proponents claim that it could generate as much as \$200 million annually—which monies would be earmarked for education, environmental regulation, economic development, and assistance to the impoverished and homeless. Envirocare of Utah strongly contests this claim, arguing that the claimed benefit is more than the company's total annual revenues of \$120 million and that such a tax could put Envirocare out of business. Kenneth Alkema, Vice President at Envirocare, argues that the tax is "unfair, exorbitant, arbitrary and capricious" and that the initiative is based on incorrect data about Envirocare's business and the radioactive waste disposal market.

**Particulars** The initiative, as proposed, calls for the imposition of a time-of-disposal tax—the amount of which tax would depend on the kind of low-level radioactive waste being disposed of in Utah—as well as a gross receipts tax of 15 percent on radioactive waste disposal facilities operating in the state. In addition, the initiative seeks to prohibit Utah from licensing or siting a facility for the disposal of high-level radioactive waste, greater than Class C radioactive waste, or Class B or C low-level radioactive waste within the state.

In addition to imposing new and additional taxes on the disposal of radioactive waste in Utah and prohibiting the disposal of certain types of waste, the proposed initiative also seeks to "[a]dequately capitalize[] the Perpetual Care and Maintenance Fund to finance perpetual care of the [Envirocare] facility and for its eventual closure." The proposal also seeks to increase the quality of monitoring of deposited radioactive waste, clarify the definitions of all radioactive waste, and prohibit the further

licensing of radioactive waste disposal facilities in the state. In response to the proposal, Envirocare states that it "believes that the closure fund, with over \$35 million, is already adequately capitalized and that Envirocare is properly monitored, meeting exhaustive regulatory requirements."

The Radioactive Waste Restrictions Act promoted by the proposed initiative also contains ethical protections that further regulate the relationships between Utah Department of Environmental Quality employees, Radiation Control Board members and disposal operators. In October, the Utah Radiation Control Board passed a position statement opposing the initiative. (See LLW Forum News Flash, "Utah Rad Board Issues Position Statement on Waste Initiative," October 25, 2002.)

*For additional information about the initiative, please see LLW Notes, March/April 2002, pp. 5-7 or go to the initiative proponents website at [www.saferbetterutah.org](http://www.saferbetterutah.org) or the initiative opponents web site at <http://www.uaut.org> or contact Ken Alkema of Envirocare of Utah at (801) 532-1330. For information about a recent decision by the Utah State Supreme Court ordering that the initiative be placed on the November ballot, see LLW Notes, July/August 2002, pp. 1, 9-11.*



### **Envirocare Issues Statement Re Waste Tax Initiative Defeat**

In response to the defeat of Citizen's State Initiative Number 1—the Radioactive Waste Restrictions Act, Dwayne Nielson, Chief Executive Officer of Envirocare of Utah, made the following statement:

We are extremely grateful to the thousands of Utahns who voted against Initiative 1, and to the hundreds of employees and volunteers who worked tirelessly to win this battle against it. We have defeated Initiative 1, but we didn't win this battle on our own.

We are truly gratified by this the level of legislative, corporate, and public support that has come out against Initiative 1. The reason we have such a broad coalition – from the Salt Lake Chamber of Commerce to the Utah Farm Bureau – is because the people of Utah don't believe a tax that targets one company is fair. They voted against a frivolous initiative that singles out a private company and levies a tax against them. An important precedent has been set in Utah.

There were no winners in this initiative process. Envirocare was forced to spend millions of dollars to defend our company and save the jobs of our employees. Initiative 1 was never about Utah education or the homeless. Initiative sponsors used these groups as pawns, and spent their union dues on corporate warfare. As a result, initiative sponsors lost credibility in the state. It is my sincere hope that our statewide campaign against this initiative has raised the awareness of Utahans, and that no company or organization will be next.

With the Initiative behind us, we're looking forward to resuming our business of serving our customers, and providing safe, environmental solutions to Utah and the country.

Thank you very much.

### **Utah Radiation Control Board Affirms Decision to Approve Envirocare's Class B and C License Application**

On November 19, the Utah Radiation Control Board voted 9 to 0 to affirm an earlier decision by the Executive Secretary to approve—subject to specified limitations and conditions—Envirocare of Utah's application to receive and dispose of containerized Class A, B, and C low-level radioactive waste at its facility in Tooele County, Utah. (See *LLW Notes*, July/August 2001, pp. 6 – 9). In so doing, the Board disposed of the one outstanding issue—whether Envirocare's emergency response and contingency plans are adequate. In regard to that issue, the Board recognized the need for Envirocare to make revisions to its emergency response and contingency plans, but held that the company may do so prior to the time when it actually begins receiving containerized Class B and C low-level radioactive waste. The Board also instructed the Executive Secretary to provide it with information on statewide radiologic emergency response coordination and to evaluate the need for changes to the siting rules.

Before a license can be issued, Utah law requires that the legislature and Governor must both approve the facility. Envirocare has indicated, however, that it does not plan to seek approval at this time.

#### **Background**

The Executive Secretary originally approved Envirocare's application to receive and dispose of containerized Class A, B, and C low-level radioactive waste on July 9, 2001. (See *LLW Notes*, July/August 2001, pp. 6 – 9). Appeals to that decision were subsequently filed by a variety of opposition groups. On March 1, 2002, the Utah Radiation Control Board granted summary



## States and Compacts *continued*

judgment in favor of Envirocare on eight of nine issues raised on appeal. On the same date, the Board denied Families Against Incinerator Risk (FAIR) standing to intervene in the issuance of a license amendment to allow Envirocare to dispose of containerized Class A waste in an existing cell. (See *LLW Notes*, March/April 2002, pp. 8 – 9.)

The July 9 technical decision to approve Envirocare's license request is based on a review by the Utah Division of Radiation Control and its contractor, URS Corporation, of Envirocare's application, supporting technical documents and public comments. It contains the following conditions:

- ♦ the legislature and Governor must both approve the facility;
- ♦ the legislature must determine ownership of the site after 100 years of closure of the facility; and
- ♦ the legislature must authorize sufficient resources to the Division of Radiation Control to oversee transportation and disposal activities associated with the license. A tentative decision to approve Envirocare's license request was originally issued on January 2, 2001. (See *LLW Notes*, January/February 2001, pp. 1, 6.)

### **Envirocare's Decision Not to Seek Legislative or Gubernatorial Approval**

Shortly after the license request was approved, Envirocare issued a statement that “[a]fter careful consideration, Envirocare has determined it will not seek legislative or gubernatorial approval for its Class B and C low-level radioactive waste proposal.” Under Utah law, the Governor and legislature must approve any new waste disposal licenses. Envirocare's decision was attributed to public confusion between the companies proposal and that of the Goshute Tribe and Private Fuel Storage (PFS) to accept high-level spent fuel rods from nuclear power plants.

The legislative session concluded on March 6, 2002 with no action being taken. The next legislative session begins on January 20, 2003.

### **Next Step**

The Presiding Officer of the Utah Radiation Control Board will now draft an order, to be approved by the Board at its December or January meeting, which will affirm its November 19 decision for the administrative record. Upon approval of the order, the parties will have 20 days to file a reconsideration request. If no such request is received, the licensing process becomes a final agency action and the approval process moves into the legislative/gubernatorial approval arena.

*Documents related to Envirocare's application for the disposal of containerized Class A, B and C radioactive waste—including a copy of Envirocare's license application, the draft Safety Evaluation Report, the draft Radioactive Materials License, and the draft Groundwater Discharge Permit—as well as to the company's application to dispose of containerized Class A waste in the existing cell are available for review and downloading on the Division of Radiation Control's website at*

*[www.deq.state.ut.us/eqrad/drc\\_hmpg.htm](http://www.deq.state.ut.us/eqrad/drc_hmpg.htm).*

*For further information about the application or the appeals, please contact Bill Sinclair of the Utah Division of Radiation Control at (801) 536-4250.*

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## **Envirocare Moves Headquarters**

Envirocare of Utah recently moved its corporate headquarters from downtown Salt Lake City to the International Center. The new corporate

*(Continued on page 12)*



### ***Northwest Compact/Washington***

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

The State of Washington and the U.S. Department of Energy have reached agreement to develop milestones for characterizing and determining how to properly dispose of transuranic (TRU) waste currently buried at the Hanford site near Richland, Washington.

DOE had previously stated that it intends to begin shipping up to 170 drums of TRU waste to Hanford from Ohio and California in mid-December. DOE plans to eventually dispose of the TRU at its underground storage facility (Waste Isolation Pilot Plant, or WIPP) in Carlsbad, New Mexico. Hanford is seen as a good interim location to store TRU wastes from small DOE sites because it is one of the nation's few facilities that has the capabilities to check barrels of TRU wastes to see if they meet WIPP's strict standards, fix any problems and repack the wastes properly. Hanford already has thousands of barrels of TRU wastes on-site.

In response to DOE's announced intention to begin shipping the waste, the State of Washington threatened to sue and initiated negotiations with the department. Amongst other things, the state wanted a legal agreement that will allow it to enforce the timely processing and shipment of TRU wastes to other DOE facilities.

According to the State of Washington's press release, a joint letter of agreement has been signed between state representatives and DOE Assistant Secretary for Environmental Management Jessie Roberson. The main elements of the agreement are:

- ◆ DOE and the Washington Department of Ecology have agreed that, by March 1, 2003, they will negotiate milestones for cleaning up

buried mixed wastes that have been generated at Hanford.

- ◆ On December 18, DOE will begin the Ohio and California shipments of TRU waste—scheduled to occur during the next eight months.
- ◆ DOE has agreed to ship two units of Hanford-site TRU waste to WIPP for every one unit of off-site TRU waste stored at Hanford.
- ◆ The State of Washington has agreed not to file suit to prevent the waste shipments until March 1, 2003.
- ◆ DOE will pursue a dialogue with interested states on how to accelerate the disposal of TRU waste and Washington will sponsor regular local meetings.
- ◆ DOE reaffirmed its commitment to address comments previously received for the Hanford Solid Waste Environmental Impact Statement and to issue a new draft for additional review and comment.

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chemical levels in soil. The Corps says it does not have to adhere to the state standards because they were never made into law. Hundreds of other individuals and entities sent letters to the Corps about its Maywood cleanup proposal during a three-month public comment period, which ended in mid-November. The Corps is currently reviewing the comments and hopes to determine what course of action to take by the end of next year.

The waste in question consists of over 450,000 tons of pre-UMTRCA mill tailings from the former Maywood Chemical site. The Corps' proposed treatment plan is expected to cost about \$244 million, whereas sending all of the soil for disposal is estimated to cost about \$254 million. The plan requires approval from the U.S. Environmental Protection Agency.



### ***Rocky Mountain Compact/Colorado***

## **Shattuck Cleanup to Begin**

In the very near future, removal will begin of 150,000 cubic yards of rocks, gravel and low-level radioactive waste from the Shattuck site near Denver, Colorado. The cleanup, which is expected to take 18 months to finish and cost \$22 million to \$35 million, marks the last of 44 radium processing sites in metro Denver that the government has cleaned up since they were added to the Superfund National Priorities List in 1983. The waste will be moved by rail cars to a waste facility in Southern Idaho.

The waste was generated by a processing plant operating at the site since 1917. The plant ceased operations in 1984, after which an intense debate erupted over its cleanup. In 1992, the U.S. Environmental Protection Agency determined to stabilize and cover the waste, leaving it on-site. EPA reversed its cleanup choice in 1999 in response to serious campaigning by local residents.

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***(Continued from page 10)***

home is located closer to Envirocare's low-level radioactive waste disposal facility in Clive, Utah. The new corporate address is as follows:

605 North 5600 West  
Salt Lake City, UT 84116

The company's phone and facsimile numbers remain the same.

"Following all the hard work of the last year, it's a real privilege for us to be able to get a fresh start on Envirocare's growth as an environmental solutions company," said Dwayne Nielson, Envirocare's President and CEO. "Our mission is to extend our expertise and industry knowledge beyond the disposal industry to help our customers solve environmental cleanup solutions safely and cost-effectively."

### ***Maine***

## **First Fuel Cask Moved from Big Rock Plant**

In mid-November, the first cask containing spent radioactive fuel was successfully removed from Big Rock Point Nuclear Power Plant and placed in on-site dry storage—the first critical step toward dismantling of the facility.

In total, 441 bundles of spent radioactive fuel and an assortment of contaminated equipment need to be removed from the plant's spent fuel pool. The fuel rods are being placed in seven concrete and steel casks, with an eighth cask scheduled to be filled with miscellaneous contaminated equipment. The dry storage area which will house the casks is approximately one quarter mile away. The first cask contained 63 bundles of spent fuel. The remaining 378 bundles are expected to be in dry storage by the beginning of 2003. The casks will remain in dry storage at least until 2012, after which time they will be moved to the planned Yucca Mountain high-level radioactive waste repository.

The Big Rock Point Plant closed down in 1997 after 35 years of operation. Demolition at the site is scheduled to be completed by 2005, at which time the site will be returned to greenfield status—with the exception of the dry storage area.



## *Entergy Arkansas v. State of Nebraska*

### Nebraska Designates Issues on Appeal

On November 18, the State of Nebraska filed various documents with the U.S. Court of Appeals for the Eighth Circuit relating to its appeal of a lower court's September 30 decision ordering the state to pay the Central Interstate Low-Level Radioactive Waste Commission \$151 million in damages. Amongst the documents filed is a listing of the issues that may be raised by the state in its appeal.

The appeal relates to a district court decision in a case—which was initiated in December 1998—that challenges the State of Nebraska's actions in reviewing US Ecology's license application for a low-level radioactive waste disposal facility in Boyd County. The district court ruled in favor of the Central Commission finding, among other things, that the state's license review process was "politically tainted" by former Governor Benjamin Nelson's administration. (See LLW Forum News Flash, "Court Issues Ruling in Nebraska/Central Commission Lawsuit: State Ordered to Pay \$151 Million in Damages," September 30, 2002.) The state filed a notice of appeal on October 30.

#### Issues on Appeal

In its recent filings, the state identified the following six issues that it may raise in its appeal of the district court's decision.

1. *Whether a commission, not a party to an interstate compact, may recover money damages from a compact member state when neither the commission nor any compact member state suffered monetary loss from a breach of that compact.*
2. *Whether a state that is a member of an interstate compact has a right to a jury trial in breach of compact action brought in federal court by a private party seeking money damages.*

3. *Whether a district court can properly find that a state violated its compact duty to conduct a license application review process in good faith based on its findings that the state's governor publicly stated and acted as though he opposed the license, even though the evidence does not support a finding that (i) the governor ever directed the state's regulatory agencies to deny the license, (ii) the regulatory agencies ever agreed to or reviewed the license application on any basis other than its merits, and (iii) the agencies acted arbitrarily and capriciously by denying the license.*

4. *Whether a district court may award prejudgment and post-judgment interest against a compact member state when the purported sovereign immunity waiver in or under the interstate compact does not provide for any award of interest, and may calculate prejudgment interest from the date of each payment by the plaintiff, rather than the date of the compact breach or other date.*

5. *Whether a district court, which has enjoined a state licensing process because the state had conducted it in bad faith, can order the state to pay all of the money that third parties have spent on that process, rather than order it to correct any bad faith conduct and finish the process.*

6. *Whether a district court's finding of liability and damages must be reversed because the evidence relied upon to reach a finding of bad faith should have been barred, in whole or in part, by the applicable statute of limitations, the *res judicata* doctrine, and/or the *Noerr-Pennington* doctrine.*

#### Background

On December 21, 1998, Nebraska regulators announced their decision to deny US Ecology's license application. (See LLW Notes, January/February 1999, p. 8.) Nine days later, five regional utilities filed suit, arguing that Nebraska regulators violated the compact, state, and federal law—as well as a statutory and contractual obligation to exercise "good faith"—in their review of the license application. (See LLW Notes, January/February 1999, pp. 16–17.)

**The Parties** The utilities which filed the original action included Entergy Arkansas, Inc.; Entergy Gulf States, Inc.; Entergy Louisiana, Inc.; Wolf



Creek Nuclear Operating Corporation; and Omaha Public Power District. One Nebraska utility opted not to join the action. In addition, US Ecology joined the action as a plaintiff in March 1999. The Central Interstate Low-Level Radioactive Waste Commission was originally named as a defendant in the suit, but subsequently realigned itself as a plaintiff.

Various Nebraska agencies, officials, employees and individuals were named as defendants to the original action. However, during the course of the litigation, several amended complaints were filed and certain claims—such as the due process claims put forth by the generators and US Ecology—were dismissed. Accordingly, the current defendants to the action, as identified in the Central Commission’s outstanding amended complaint, include the State of Nebraska, its Governor, and the Directors of the Department of Environmental Quality (NDEQ) and Department of Health and Human Services Regulation and Licensure (NDHHS).

**The Issues** In the original action, the generators and US Ecology claimed that the license application was denied on improper grounds and that the entire license review process was tainted by bias on the part of Nebraska and by the improper involvement of NDHHS. They cited various instances of bad faith by the state, all of which have been disposed of by the court in regard to US Ecology’s and the generators’ suit, including but not limited to improper delays and impediments, the state’s refusal to adopt adequate budgets or schedules, and the filing of repeated litigation against the project. They also challenged the constitutionality of the procedures employed in making a licensing decision, and they alleged various related statutory and constitutional violations. (For a more detailed explanation of the issues raised by US Ecology and the generators, see *LLW Notes*, January/February 1999, pp. 16–17.)

In its amended complaint, the Central Commission argues that “the defendant State of Nebraska has violated its contractual, fiduciary,

and statutorily established obligations of good faith toward sibling Compact states and the administrative entity comprised of the representatives of the five states, that is, this Commission.” (Persons interested in a listing of the specific alleged violations are directed to the amended complaint themselves.)

**Requested Relief** In its amended complaint, the Central Commission seeks declaratory and monetary relief including, among other things

- ♦ an accounting of all funds received by the State of Nebraska in furtherance of the project and the exact uses of said funds;
- ♦ compensatory damages for costs incurred due to Nebraska’s alleged misconduct, and
- ♦ the creation of “a just and equitable remedy . . . including the removal from the State of Nebraska’s independent control, supervision, and management any further aspect of the regional facility’s license application process.”

In particular, the Commission requests that the court “substitute an appropriate manner of completing the licensing, such as through an appointed Master, or through a scientifically qualified, appointed entity or group representing either all of the five Compact states equally, or in the alternative, none of them, or through another impartial appropriate governmental agency.”

*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>.*



***Natural Resources Defense Council v.  
U.S. Department of Energy***

## **Additional States Seek Standing in Suit Against DOE**

The States of Oregon and South Carolina recently asked the U.S. District Court in Idaho to grant them standing to file “friend of the court” briefs in a lawsuit challenging the U.S. Department of Energy’s plans to reclassify residual high-level radioactive waste at three federal sites to allow for on-site disposal. The States of Idaho and Washington already have “friend of the court” status in the case. DOE had previously requested that the case be dismissed, but the court denied the department’s motion to do so in early August. (See *LLW Notes*, July/August 2002, pp. 18-19.)

The suit was filed by the Natural Resources Defense Council, the Snake River Alliance, and the Yakama Nation in protest of a 1999 DOE rulemaking which provides DOE authority to reclassify some high-level radioactive waste as “incidental” waste suitable for disposition in underground storage tanks. The rulemaking allows DOE 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. If upheld, the rulemaking would allow DOE to dispose of high-level radioactive waste at the Idaho National Engineering and Environmental Laboratory, the Hanford facility in Washington, and the Savannah River Site in South Carolina.

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.

***ToxGon, Inc. v. Duratek, Inc.***

## **Duratek Faces Patent Violation Suit**

The U.S. Court of Appeals for the Federal Circuit recently reversed a lower court’s decision dismissing a lawsuit against Duratek, Inc. that accuses Duratek of using another company’s patented system to convert nuclear waste into glass. In striking the dismissal, the appellate court held that the fact that Duratek was working under contract for the U.S. government does not shield it from liability.

The action arises from the 1998 hiring of Duratek—a Columbia, Maryland waste management company—as a subcontractor of BNFL, Inc.—a unit of closely held British Nuclear Fuels, PLC—to treat radioactive waste at the U.S. Department of Energy’s Hanford facility in the State of Washington. To fulfill the contract, the company used a process which included the use of a “pilot melter” to convert nuclear waste into glass. ToxGon, Inc.—a closely held Seattle, Washington company—claims that the use of the melter relied upon technology for which it had been awarded a patent in 1981.

A Duratek representative said that the company “does not agree with the claim and will aggressively defend its position in the courts.”

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The plaintiffs, 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.



### McSarrow New DOE Deputy Secretary

Kyle McSarrow, formerly Chief of Staff to Energy Secretary Spencer Abraham, has been sworn in as Deputy Secretary of the U.S. Department of Energy. In announcing the move, Abraham said that "Kyle's new role will allow the department to tap into his extraordinary management and policy skills, focusing them on the array of energy, science, environmental and homeland security issues facing the department." Abraham continued by saying that he is "confident the department will benefit from Kyle's legal and policy expertise, as well as his knowledge of and ability to work closely with members of Congress on key issues."

McSarrow was confirmed to his new post by the Senate in mid-November. In his new position, McSarrow will be chief operating officer of DOE, overseeing in excess of 100,000 federal and contractor employees, 17 national laboratories, and a \$22 billion budget.

Prior to coming to DOE in 2001, McSarrow served as Deputy Chief of Staff and Chief Counsel to Senator Trent Lott (R-Miss) and as Chief of Staff to the late Senator Paul Coverdell (R-Ga). He also formerly served as a Captain in the U.S. Army Corp of Engineers and served as assistant to the Corp's general counsel.

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### Meserve to Leave NRC

Nuclear Regulatory Commission Chairman Richard Meserve recently announced that he will step down in the spring after three years of being in charge of the agency. Meserve is taking a position as President of the Carnegie Institution--a scientific research organization where he has served as a director for 10 years.

Some of the accomplishments achieved during Meserve's term at NRC included the revision of strategies for controlling nuclear materials, preparation for an anticipated new generation of reactor designs, and development of responses to terrorism threats against nuclear facilities. During Meserve's reign at NRC, the agency reviewed and granted numerous license extensions and power increases at nuclear reactors across the country. In addition, under Meserve, NRC moved more toward a "risk-based" approach to regulation and away from the more traditional, prescriptive approach.

Meserve was originally appointed to the NRC by then-President Bill Clinton and began working at the agency in October 1999. Prior to serving as NRC Chair, Meserve worked as a partner in the Washington, D.C. law firm of Covington & Burling.

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### NRC Issues Final Rule re Decommissioning Trust Provisions and Regulatory Guide

On November 25, the U.S. Nuclear Regulatory Commission issued a final rule that revises its regulations on decommissioning trust provisions for commercial nuclear power plants and issued a regulatory guide that could be used by power plant licensees to implement the regulations. According to the agency, the final rule will (1) help safeguard decommissioning trust funds from investment risks, (2) ensure that licensees provide NRC with adequate information about their trusts, and (3) provide safeguard against improper payments from the trusts.

NRC said it issued the rule, in part at least, because deregulation may impact state oversight



## Federal Agencies and Committees *continued*

of the terms and conditions of the decommissioning trusts, thereby necessitating more active oversight by NRC. In addition, NRC hopes that the rule may help to expedite transfer of operating licenses for nuclear power plants by providing increased regulatory predictability.

Under the final rule, decommissioning trust agreements must be in an appropriate form to provide greater assurance that an adequate amount of decommissioning funds will be available. Uniform decommissioning trust terms and conditions are provided under the rule for nuclear power licensees that are not subject to State and Federal Energy Regulatory Commission regulation. The rule also requires notice to NRC of any decommissioning trust withdrawals made prior to permanent cessation of operations.

The final rule provides that criteria that have been required as conditions of license transfer in connection with the sale of nuclear power reactors will now be incorporated as part of a proposed new section of Title 10 of the Code of Federal Regulations under Part 50.75. The conditions are as follows:

- ◆ The trust must be an external trust fund held in the United States that is established under a written agreement with an appropriate state or federal government agency or an entity whose operations are regulated by a state or federal agency.
- ◆ The trust agreement must prohibit trust instruments in securities or other obligations of any reactor owner or its affiliates, successors, or assigns or provide that no more than 10% of their trust assets may be in these securities or other obligations.
- ◆ The trust agreement must prohibit investments in any entity owning one or more nuclear power plants (except for investments tied to general market indices or non-nuclear sector mutual funds) and prohibit investments in a mutual fund in which at least 50% of the fund is invested in the securities of a parent company whose subsidiary is an owner of a foreign or domestic nuclear power plant.
- ◆ It must be stipulated in the trust agreement that no amendments are allowed in any material respect without 30 working days prior written notice to the NRC and without objection from NRC.
- ◆ It must be stipulated in the trust agreement that the trustee, investment advisor, or anyone else directing investments made by the trust should act prudently.
- ◆ The trust agreement must provide that no disbursements or payments from the trust (other than payment of routine administrative expenses or for withdrawals made pursuant to 10 CFR 50.82(a)(8)) may be made by the trustee until the trustee has first given the NRC 30 working days prior written notice and the NRC has not objected.
- ◆ The rule prohibits anyone directing investments from the funds from representing the licensee or its affiliates or subsidiaries as the investment manager for the funds or accepting day-to-day management direction of the funds' investments or direction on individual investments by the funds from the licensee or its affiliates or subsidiaries.

NRC published a proposed rule on this subject on May 30, 2001 (66 *Federal Register* 29,244). A total of 36 comments were received from licensees, utility groups, state agencies and commissions, the National Association of State Regulatory Utility Commissioners (NARUC), and investment management companies.

Regulatory Guide 1.159, "Assuring the Availability of Funds for Decommissioning Nuclear Reactors," Revision 1, contains guidance that may be used by nuclear power plant licensees in implementing the changes in NRC regulations. It is expected to be available shortly on the NRC Agency-wide Documents Access and Management System (ADAMS).



### **NRC Considers Molycorp's Request for Additional Cleanup Time**

The U.S. Nuclear Regulatory Commission has granted a request by Molycorp, Inc. to adjust the decommissioning schedule for its York, Pennsylvania site—establishing a new cleanup schedule by February 15, 2002. Originally, the company's license required Molycorp to complete decommissioning of the site by June 2002—two years after NRC approved the company's decommissioning plan. Molycorp, however, is seeking additional time.

Molycorp mines and manufactures metal used for electronic devices, such as computer chips. It is currently on NRC's Site Decommissioning Management Plan list of sites. The company operated a six acre plant in Pennsylvania between 1930 and the early 1990's. Raw materials used at the plant contained low-levels of radioactive material thorium and uranium and therefore required federal oversight and licensing. The site is expected to be available for "unrestricted use" development after it is fully cleaned.

Molycorp also operates a plant in Washington, Pennsylvania. That plant is also on the NRC Site Decommissioning Management Plan list.

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### **License Renewals Move Forward**

The U.S. Nuclear Regulatory Commission continues to actively process license renewal applications for plant-life extensions. In that vein, the agency recently announced that it will hold two public meetings on the environmental review related to the application of South Carolina Electric & Gas Company to renew the operating license for the V.C. Summer Nuclear Station. In

addition, the NRC recently announced that it is seeking public comment on its preliminary conclusion that there are no environmental impacts that would preclude renewal of the operating licenses for the two reactors at the St. Lucie nuclear plant on Hutchinson Island near Port St. Lucie, Florida. NRC also held a meeting on November 6 in Webster, New York, at which it accepted public comments regarding an application submitted by Rochester Gas & Electric (RG&E) Corp. to renew the operating license for the R.E. Ginna Nuclear Power Plant.

#### **License Renewal Applications**

**V.C. Summer Nuclear Station** The current operating license for the V.C. Summer nuclear power plant, which is operated by the South Carolina Electric & Gas Company, is set to expire on August 6, 2022. The company submitted a renewal application on August 6, 2002. NRC has docketed the application and will hold two public meetings on December 11 at Jenkinsville, South Carolina. The meetings will include an overview and NRC staff presentation on the environmental process related to license renewal, after which members of the public will be given the opportunity to present their comments on what environmental issues the NRC should consider during its review.

At the meetings, NRC staff plan to gather information for a supplement to the agency's generic environmental impact statement on license renewal that will be specific to V.C. Summer. It will contain a recommendation regarding the environmental acceptability of the license renewal action. At the conclusion of the information gathering process, the NRC will prepare a summary of conclusions and significant issues and will send a copy to interested persons who participated in the scoping process. NRC staff will then prepare a draft environmental impact statement supplement for public comment and will hold a public meeting to solicit comments. After consideration of comments received on the draft, the NRC will prepare a final



## Federal Agencies and Committees *continued*

EIS supplement. Public comments on the scope of the Summer-specific supplement may be submitted by January 30, 2003, either by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Mail Stop T-6-D-59, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001, or by email to [VCSummerEIS@nrc.gov](mailto:VCSummerEIS@nrc.gov).

**R.E. Ginna Nuclear Power Plant** The operating license for the R.E. Ginna nuclear power plant is set to expire on September 18, 2009. Rochester Gas & Electric Company (RG&E) submitted a renewal application on July 30. As part of its application, the company submitted an environmental report. The public meeting on RG&E's application was held on November 6 in Webster, New York. There were be two sessions during which NRC staff provided a presentation on the license renewal and environmental review processes, the proposed scope of the environmental review and the proposed timeframe. Public comment was then accepted on issues that should be reviewed or on the proposed scope of the review.

As with the V.C. Summer application, NRC will use the November 6 meetings to gather information for a supplement to the agency's generic environmental impact statement on license renewal that will be specific to the R.E. Ginna plant. The same process as is outlined above under "V.C. Summer" will be followed for the Ginna supplement. Interested persons may submit comments on the Ginna supplement to the same address as the Summer supplement or may send an email to [GinnaEIS@nrc.gov](mailto:GinnaEIS@nrc.gov).

**St. Lucie Nuclear Plant** Florida Light & Power submitted an application for extension of the St. Lucie licenses in November 2001. The current licenses are set to expire on March 1, 2016 for Unit 1 and on April 6, 2023 for Unit 2. NRC has issued a draft environmental impact statement finding no environmental impacts that would preclude renewal of the licenses. The document is open for public comment until January 15, 2013. Findings contained in the document were

discussed at public meetings held in Port St. Lucie on December 3. The meetings included an overview of the application and a presentation by NRC staff and its contractors on the contents of the draft supplement to the Generic Environmental Impact Statement for license renewal. The NRC staff's preliminary recommendation, as contained in the supplement, is that the adverse environmental impacts of license renewal for the two units at St. Lucie are not so great that preserving the option of license renewal for energy-planning decision makers would be unreasonable. Written comments on the draft supplement continue to be accepted at the address listed under the "Summer" plant above or via email at [StLucieDSEIS@nrc.gov](mailto:StLucieDSEIS@nrc.gov).

*Copies of renewal applications for all three of the above-identified nuclear facilities and associated documents may be obtained at <http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html>.*

### NRC Regulations/Status of Renewals

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

To date, NRC has approved license extension requests for ten reactors on five 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; and the Turkey Point nuclear reactors near Homestead, Florida. (See *LLW Notes*, May/June 2002, p.19.) NRC is currently processing license renewal requests for twelve other reactors at six sites. 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.)

*(Continued on page 21)*



### **NRC Amends Yucca Mountain Unlikely Events Regulation**

The U.S. Nuclear Regulatory Commission is amending its regulations concerning the proposed Yucca Mountain high-level radioactive waste repository to establish numerical values for deciding when a geological, hydrological or climatological feature, event or process is unlikely and therefore need not be considered in evaluating whether the repository would meet NRC's radiation dose standards for groundwater protection and human intrusion. Unlikely events will still need to be considered, however, in evaluating whether the repository would meet the overall 15-millirem radiation dose limit for protection of individuals.

NRC has adopted U.S. Environmental Protection Agency standards that require that naturally occurring "unlikely" features, events, and processes or sequences of processes (such as volcanoes) be excluded from determining compliance with radiation dose standards for groundwater protection and human intrusion. NRC's new regulation defines "unlikely" as having less than a 10 percent chance of occurring within 10,000 years of waste disposal.

A proposed rule on this issue was published in the *Federal Register* on January 25. No changes were made as a result of public comments received and the Commission determined to finalize the rule as originally proposed.

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### **NRC Withdraws Rule re Electronic Communications**

The U.S. Nuclear Regulatory Commission has withdrawn a direct final rule that would have amended its rules to clarify when and how

licensees and members of the public may use electronic means to communicate with the agency. NRC took the action due to a number of adverse comments received on the rule.

The direct final rule was originally published last September and included guidance on how to submit documents to the agency electronically. The direct rule and guidance were scheduled to become effective December 5. However, NRC concurrently published for comment an identical proposed rule on September 6 stating that if any significant adverse comments were received, the direct final rule would be withdrawn.

Since adverse comments were received and the direct final rule withdrawn, NRC now plans to consider the comments in regard to the identical proposed rule. A second comment period on the rule will not be initiated, but the NRC plans to address the comments received to date in a later final rule.

*For additional information, please contact John Skoczylas at (301) 415-7186 or [EIE@nrc.gov](mailto:EIE@nrc.gov) or Brenda Shelton at (301) 415-7233 or [hjsk@nrc.gov](mailto:hjsk@nrc.gov).*

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### **NRC Proposes Changes to Event Notification Regulations**

The U.S. Nuclear Regulatory Commission is proposing to amend notification and reporting requirements for security and other events involving licensed nuclear facilities and the transportation of certain types of nuclear material. The proposed revisions would more closely align reporting requirements for independent spent fuel storage installation (ISFSI) and monitored retrievable storage (MRS) facility licensees to those of nuclear reactor facilities. In addition, the requirements for submittal of written followup reports on safeguards events would also be



## Federal Agencies and Committees

changed. This change would affect power reactors, ISFSI's, and several other facility categories that produce, possess, or transport spent fuel or special nuclear material.

The proposed amendments—which are intended to “help the NRC and its licensees to better focus their efforts on the most safety-significant issues and to communicate timely information on recent and ongoing events”—would reduce, consolidate and remove some licensee reporting notifications and lengthen the reporting period for other notifications. In addition, new requirements would be added to allow NRC to effectively carry out its regulatory responsibilities and to respond to inquiries during emergencies.

Some of the proposed changes are as follows:

- ◆ licensees would be required to submit an immediate followup report for degradation in the level of safety of an ISFSI or MRS or other worsening condition, including a declaration of an emergency, a change from one emergency classification to another, or termination of an emergency class;
- ◆ the maintenance of an open, continuous communication channel with the NRC Operations Center would be required, upon request by the NRC;
- ◆ the requirement that licensees notify the NRC not later than four hours of a fire or explosion that affects the integrity of spent fuel or high-level waste or its container would be eliminated since immediate reporting would be required under an approved emergency response plan; and
- ◆ a requirement would be added that licensees notify the NRC not later than four hours after the discovery of an event or situation involving spent nuclear fuel or high-level waste related to the protection of public health and safety of onsite personnel, or that of the environment, for which a news release is planned or notification to other governments has been or will be made.

A *Federal Register* notice on the proposed amendments was published on August 22. Comments on the proposed amendments are currently being reviewed—the comment period having expired on November 5. A copy of the proposed rule and supporting documents may be found at <http://ruleform.llnl.gov/cgi-bin/rulemake?source+ENPRULE>.

*For additional information, please contact Tony DiPalo, Office of Nuclear Materials Safety and Safeguards, at (301) 415-6191 or at [ajd@nrc.gov](mailto:ajd@nrc.gov).*

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### **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 *LLW Notes*, 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 Material Control and Accounting Regs

The U.S. Nuclear Regulatory Commission has issued a final rule on its material control and accounting regulations for nuclear power plants, fuel cycle facilities and other licensees that possess 350 grams or more of special nuclear materials (uranium-233, enriched uranium, or plutonium). According to the agency, "[t]he rule is designed to streamline the regulatory process and provide additional flexibility to licensees." It amends the frequency and timing of reporting requirements for certain licensees for submitting material balance and inventory composition reports.

Prior to the rule, most licensees possessing 350 grams or more of special nuclear material were required to file two reports a year. Under the final rule, these licensees only have to file one report a year—within 60 days of conducting a physical inventory. In addition, the rule broadens the previous exclusion from the requirement to perform an environmental assessment by making clear that no such assessment is needed before approving an amendment for a safeguards plan.

The rule also seeks to develop risk-informed safeguards requirements for certain types of facilities licensed to possess and use between one and five kilograms of moderate to highly enriched special nuclear material. The new rule allows for material control and accounting requirements to be more consistent with the safeguards risk posed by various types of facilities.

A proposed rule on this topic was published in the *Federal Register* last May, with the public comment period closing the following August. Only four comment letters were received from the industry, the Nuclear Energy Institute, and a consulting firm.

*(Continued from page 1)*

NRC's policy, according to the release, is "to favor the release of slightly contaminated solid materials, which do not pose significant health hazards." However, the Commission notes that it is open to other viewpoints.

In preparation for this rulemaking, NRC has developed several staff documents for public comment, held several public meetings, and sponsored a study by the National Academy of Science on alternatives for handling this contaminated material. (See *LLW Notes*, March/April 2002, pp. 1, 20 - 21.) Information gathered from these sources will serve as a starting point and will be supplemented during the rulemaking process. In particular, the agency notes that any additional public workshops will focus on new areas, such as the feasibility of restricting use. In addition, NRC staff plan to explore the use of web-based methods for interacting with stakeholders. Finally, NRC staff "will consider information and data from related national and international studies and weigh the pros and cons of either implementing or endorsing the American National Standards Institute standard of one millirem (equal to an arm or leg X-ray) per year as the primary dose standard for clearance of contaminated material for further use."

According to the press release, NRC anticipates issuing a final regulation on the control of slightly contaminated solid materials within three years.

*For background information gathered by the NRC on this subject, go to the agency's web site at [www.nrc.gov](http://www.nrc.gov), under the Nuclear Materials page.*



## 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
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#### 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)**

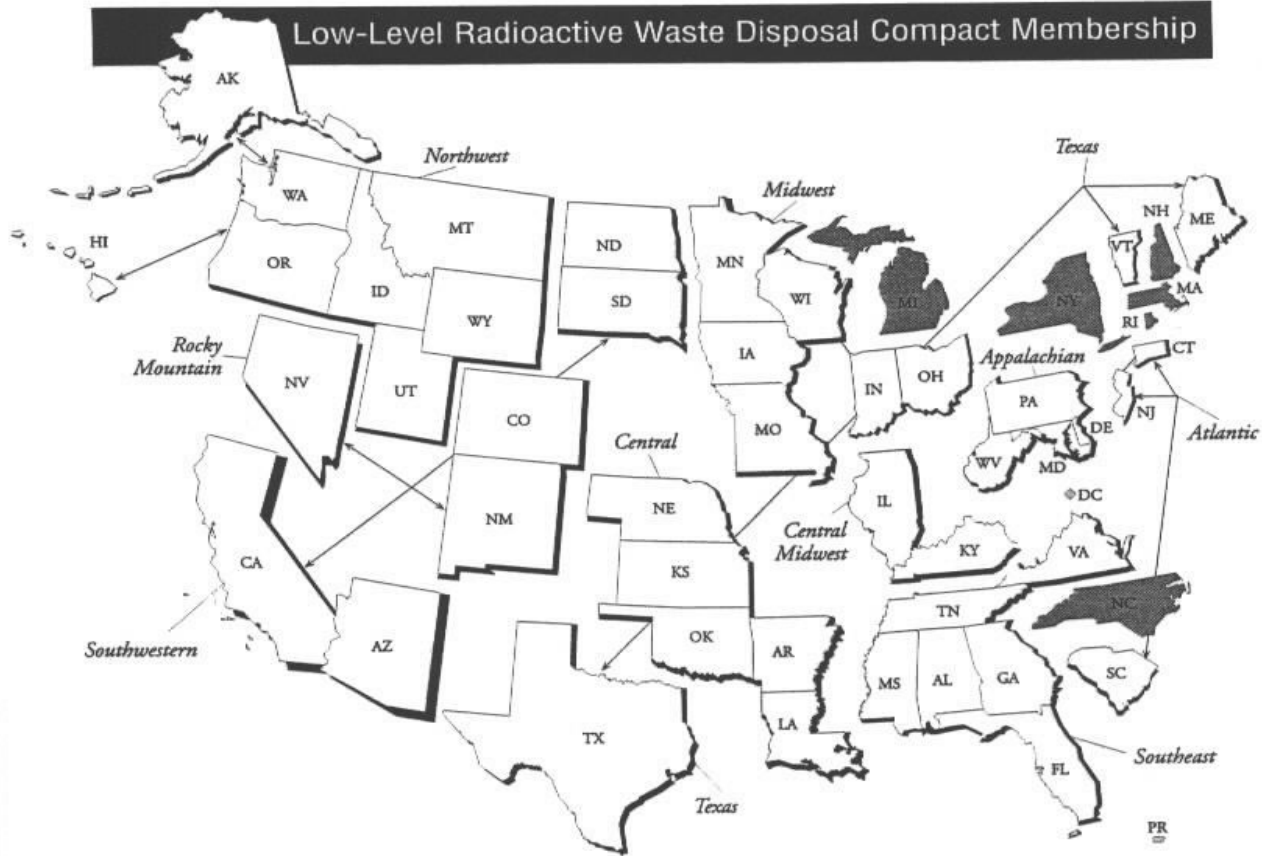
#### Accessing LLW Forum, Inc. Documents on the Web

*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