

# LLW *notes*

Volume 21, Number 3 May/June 2006

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

### **Federal District Court Strikes Down Hanford Initiative**

On June 12, the United States District Court for the Eastern District of Washington struck down the Washington State Cleanup Priority Act ("CPA")—a voter initiative that would bar the U.S. Department of Energy from sending any additional waste to the Hanford nuclear reservation until the department cleans up the facility. In so doing, the court ruled, among other things, that the initiative is preempted by the Atomic Energy Act (AEA) and violates sovereign immunity. Moreover, the court ruled that the initiative is facially invalid and cannot be applied constitutionally in any circumstances—i.e., severability is not an issue.

The State of Washington is currently considering whether to appeal the court's decision.

#### **The Ruling**

The district court's decision grants a motion for summary judgment filed by the United States and joined in by intervenor-plaintiffs Fluor Hanford (Fluor) and the Tri-City Industrial Development Council (TRIDEC). In so ruling, the court found that the CPA is invalid in its entirety as being in violation of the Supremacy Clause of the U.S. Constitution. In addition, the court found that specific sections of the CPA violate the dormant Commerce Clause, the deliberative process privilege, and the Resource and Conservation

Recovery Act (RCRA) waiver of immunity to the United States.

The decision also grants TRIDEC's motion for partial summary judgment in that it finds that the CPA substantially impairs the Tri-Party Agreement (TPA), contracts between the Batelle Memorial Institute and U.S. Department of Energy (DOE), and Framatome's private contracts, in violation of the Contract Clause. The TPA was entered into by the State of Washington, DOE and the U.S. Environmental Protection Agency (EPA) in 1989 to, among other things, assure compliance with the permitting and corrective action requirements of RCRA and DOE's obligations under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

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

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# Low-Level Radioactive Waste Forum, Inc.

## LLW Notes

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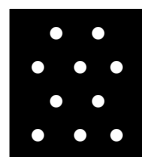
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## Key to Abbreviations

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

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

## LLW Forum to Host Workshop re Problematic Waste Streams

The Low-Level Radioactive Waste Forum will hold its next meeting on September 18 – 19 at the Marriott on Marco Island, Florida. The Southeast Compact Commission for Low-Level Radioactive Waste Management is sponsoring the full two-day meeting. The second day of the meeting will end at 10 a.m. It will be immediately followed by an optional workshop devoted to addressing current problematic waste streams and post-2008 concerns should the Barnwell low-level radioactive waste disposal facility close to out-of-region waste as scheduled and no other alternative disposal options become available.

### **Problematic Waste Streams and Post-2008 Workshop**

The workshop on September 19 will include an interactive dialogue in the morning with generators, brokers and processors, disposal operators, state and compact officials, federal officials and other interested stakeholders identifying specific current and post-2008 concerns and problems. The afternoon will include a break-out session during which time meeting attendees will be separated into groups (pre-sorted for balance of backgrounds, geography, expertise, etc.) to brainstorm on potential mitigating actions or solutions. Each group will report their insights at the end of the meeting, after which all attendees will discuss potential next steps and/or further actions.

### **Registration**

The meeting and workshop are free for members of the LLW Forum, Inc. Non-member registration for both is \$500.00, payable to the “LLW Forum, Inc.” (A discounted registration rate of \$200.00 for the workshop only is also available.) Advance registration is required. Interested parties are encouraged to register early to ensure space availability. To obtain a registration form, go to the LLW Forum’s web site at [www.llwforum.org](http://www.llwforum.org) and

click on the “Registration Form” link on the home page or call Todd D. Lovinger, the LLW Forum’s Executive Director, at (202) 265-7990.

### **Hotel Reservations**

A block of 50 rooms has been reserved for Sunday, September 17 through Wednesday, September 20 for meeting attendees at the special rate of \$99.00 plus tax per night for single or double occupancy, plus a \$6 per person per day service charge. A limited number of rooms are available at this special room rate three days prior to and after the meeting. It is highly suggested that reservations be made early in order to ensure availability. Reservations must be made by August 18 to obtain the special rate. To make reservations, please call (800) 438-4373 and ask for a room in the “LOW-LEVEL WASTE FORUM” block at the Marco Island Marriott Resort and Spa.

### **Future Meeting Locations and Dates**

The winter 2007 meeting of the LLW Forum will be held in San Diego, California on March 19 – 20 at the Bahia Hotel. The Southwestern Low-Level Radioactive Waste Compact Commission is hosting the meeting. The fall 2007 meeting will be in a location, to be determined, in the Central Midwest Interstate Low-Level Radioactive Waste Compact region and is being sponsored by the compact.

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

## LLW Meetings Held in DC Metro Area in May

A series of independent meetings on issues related to low-level radioactive waste management and disposal were held in the Washington, D.C. metropolitan area from May 22 – 26. The meetings were sponsored by different groups and were intended to address various issues.

The week began with a one-day roundtable discussion sponsored by the Southeast Compact Commission for Low-Level Radioactive Waste Management and others to explore the possibility of using federal sites for commercial low-level radioactive waste disposal. Next, the Advisory Committee on Nuclear Waste sponsored a two-day workshop to address regulatory, technical and policy issues concerning commercial low-level radioactive waste disposal. The last two days of the week were devoted to individual meetings between officers of the LLW Forum, Inc. and various federal and congressional officials to report on on-going activities and initiatives and exchange information.

### **Federal Sites Options Roundtable Discussion**

The roundtable discussion was held on Monday, May 22, in Rockville, Maryland. The purpose of the meeting was to explore issues surrounding the proposed use of federal facilities or federal land for commercial low-level radioactive waste disposal. The meeting was co-sponsored by the Southeast Compact, Rocky Mountain Compact, Nuclear Energy Institute, Health Physics Society, and California Radioactive Materials Management Forum.

*For additional information or to obtain official notes from the meeting contact the Southeast Compact's Executive Director, Kathryn Haynes, at (919) 821-0500.*

**ACNW LLRW Workshop** The ACNW meeting was a two-day workshop at NRC headquarters in Rockville, Maryland focusing on regulatory, technical and policy issues surrounding commercial low-level radioactive waste disposal. Invited speakers from various stakeholder groups participated in the public meeting. The ACNW plans to update NRC Commissioners on the results of the meeting later in the year.

*For additional information, go to the ACNW web site at <http://www.nrc.gov/what-we-do/regulatory/advisory/acnw.html> or contact Mike Lee of the ACNW at (301) 415-8200.*

**LLW Forum Officers' Meetings** Officers of the LLW Forum, Inc. met with officials from the U.S. Department of Energy, U.S. Environmental Protection Agency, and congressional offices on Thursday, May 25. Meetings were then held with two of the five NRC Commissioners and staff of NRC Chair Nils Diaz on the morning of Friday, May 26.

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

### ***Central Compact***

## **Central Compact Transfers Land to Butte**

The Central Interstate Low-Level Radioactive Waste Compact Commission recently transferred to the Village of Butte 320 acres of land in Boyd County that was once designated to be the site for a regional low-level radioactive waste disposal facility. The compact commission agreed to return the land at its meeting on February 24 if Butte promised not to hold the compact, the commissioners, their individual states, US Ecology and all their associated agents and attorneys liable. The commission gave the village 60 days to accept the conditions. Otherwise, the commission would have had contractor US Ecology sell the land and turn the money over to the commission. The land is valued at approximately \$275,000.

### **Background**

The Village of Butte had previously agreed to accept the land should the commission decide to deed it to the village. However, Butte Mayor Cindy Schroetlin had also asked the commission to award the village approximately \$4 million for economic and emotional hardship associated with consideration of siting a facility there. (The compact commission received a \$145.8 million settlement from the State of Nebraska in regard to a dispute over the state's review of a site application. All but \$5 million of the settlement has been paid out to utilities, US Ecology, and compact member states.)

The compact commission had previously determined to delay action on disposition of the land at a meeting on October 28, 2005. (See *LLW Notes*, November/December 2005, p. 5.) At least one commissioner had argued at that meeting that the land should be sold and the proceeds added to the settlement that the commission received from the State of Nebraska. (See *LLW Notes*, July/August 2005, p. 6.) Other commissioners, however, argued that the property is of no value to the

compact since it is located in a state that is no longer a member and should be donated to the village as a gesture of goodwill for their support of the compact's efforts to site a facility there. After debating the issue, commission members voted to seek an appraisal of the land and revisit the issue at its next meeting.

### **Compensation and the Land Transfer**

Ultimately, the compact commission determined not to act on the \$4 million compensation request from the village of Butte. "We do appreciate the village of Butte and all they've done for us ... but, we have a moral obligation to serve the citizens of our states," said Central Commission Chair Laura Gilson at the February meeting when Schroetlin reiterated the village's request. "We didn't renege on the deal. Nebraska did. And it was our legal counsel that worked to get that big settlement."

Shortly after the meeting, on April 11, the board of the village of Butte signed a release that reads in part as follows:

"Butte hereby represents and states that it has not and will not make any other claim or file any action or lawsuit arising from or concerning the actions or failure to act of the released parties related in any way to their attempt to license and develop a disposal facility for low-level radioactive waste in the state of Nebraska."

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### ***Northwest Compact/State of Utah***

## **Duratek Shareholders Approve Merger with Energy Solutions**

On June 6, Duratek shareholders voted to approve acquisition of the Columbia, Maryland-based radioactive waste disposal company by Salt Lake City, Utah-based Energy Solutions. According to a company spokesperson, 59.71 percent of the shares voted during an afternoon stockholders meeting were in favor of the merger deal that is reportedly worth \$422.5 million—despite hedge-fund opposition from Tontine Capital Partners of

Greenwich, Connecticut. After closing documents were signed, Duratek (which was formed in 1990) became a wholly owned subsidiary of EnergySolutions.

The acquisition plan was first announced in February, shortly after BNG America, Envirocare of Utah, and Scientech D&D merged to form EnergySolutions—"a national energy services company headquartered in Salt Lake City, Utah, that ... will manage over 1000 employees in 14 states with operating support facilities in Virginia, South Carolina, Massachusetts, Tennessee, Washington State, Connecticut, Idaho, and Utah." (See *LLW Notes*, January/February 2006, pp. 1, 6 - 7.) EnergySolutions focuses on providing a full range of services to the nuclear industry.

With the acquisition of Duratek, EnergySolutions more than doubled its work force to 2,500 persons in 40 states and increased its annual revenue by approximately \$280 million based on prior Duratek financial statements. Under the terms of the acquisition, EnergySolutions paid \$22 for each of the approximately 14.9 million in outstanding Duratek shares, along with other considerations, EnergySolutions will refinance Duratek's \$77.5 million in bank debts.

EnergySolutions' Clive, Utah disposal site will not be impacted by this transaction and will continue to accept only Class A low-level radioactive waste. "No higher levels of radioactive waste will be handled or managed in the State of Utah." Instead, the merger is intended to help continue to transform the company "from a landfill in the west desert [of Utah] into a full-service nuclear company."

### **Background**

**EnergySolutions** EnergySolutions was formed in February 2006 from the merger of BNG America, Envirocare of Utah, and Scientech D&D. "The combined companies have provided specialized nuclear services in the United States market for over 20 years including high consequence nuclear operations, such as high level waste management, spent fuel handling and transportation; complex D&D projects of nuclear reactors and highly

radioactive nuclear facilities; high-end technical challenges such as fuel sludge treatment and high level waste treatment; and major decommissioning of both government and commercial nuclear facilities." Steve Creamer, formerly the President and CEO of Envirocare, serves as Chief Executive Officer of EnergySolutions.

**Duratek** Duratek is a provider of services in environmental remediation and radioactive materials disposition for commercial and government customers. Services offered by the company—which is based in Columbia, Maryland—include radioactive waste disposal, emergency response, engineering, fuel pool processing, instrumentation, liquid treatment, radiological services and D&D. Chem-Nuclear Systems, L.L.C., a wholly-owned subsidiary of Duratek, Inc., operates a commercial low-level radioactive waste disposal facility located on 235 acres in Barnwell County, South Carolina.

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### ***Southeast Compact***

## **Nominations Sought for the Hodes Award**

The Southeast Compact Commission for Low-Level Radioactive Waste Management is seeking nominations for the 2007 Richard S. Hodes, M.D. Honor Lecture Award—a program that recognizes an individual, company, or organization that contributed in a significant way to improving the technology, policy, or practices of low-level radioactive waste management in the United States. The award recipient will present the innovation being recognized at a lecture during the Waste Management '07 Symposium 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 in 2003 to honor the memory of Dr. Hodes and his achievements in the field of low-level radioactive waste management. In 2004, the Southeast Compact Commission chose W.H. "Bud" Arrowsmith as the winner of the first Hodes Award. The Texas A & M University Student Chapter of Advocates for Responsible Disposal in Texas (ARDT) was also chosen in 2004 for special recognition as an Honorable Mention in the Hodes Award program for its innovation in educational activities related to low-level radioactive waste management. William Dornsife of Waste Control Specialists, LLC was chosen as the second Hodes Award recipient in 2005 and the California Radioactive Materials Management Forum (CalRad Forum) received the award in 2006.

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

Ted Buckner, Associate Director  
Southeast Compact Commission  
21 Glenwood Avenue, Suite 207  
Raleigh, NC 27603  
919.821.0500  
[tedb@secompact.org](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 June 30, 2006.

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

## **TCEQ Advises WCS that "Significant" Technical Issues Remain**

### **Advises Company to Request an Extension**

On June 5, 2006, the Texas Commission on Environmental Quality (TCEQ) sent a letter to Rodney Baltzer, President of Waste Control Specialists, providing a status update on the agency's review of WCS' license application for near-surface disposal of low-level radioactive waste at a proposed site in West Texas. In the letter, Dan Eden, Deputy Director of TCEQ's Office of Permitting, Remediation, and Registration, advises Baltzer that the application contains "significant" unresolved deficiencies that put in jeopardy the schedule for completing the technical review in 15 months and "are problematic and affect our ability to offer a recommendation to issue a license for the proposed facilities." Accordingly, the letter states that WCS will need to request an extension of time consistent with TCEQ rules and that Baltzer should contact Eden within 24 hours "to discuss a proposed timeline for moving forward."

### **Outstanding Deficiencies**

WCS recently submitted two revisions to the license application, dated March 31 and April 28, in response to the TCEQ's issuance of a second and final Technical Notice of Deficiency on January 30 of this year. According to TCEQ, the revisions make "considerable" technical changes to the application late in the process—including the submission of a new conceptual model for the site's geology and hydrogeology and new designs for the disposal facilities that will require extensive technical review. TCEQ staff finds that "serious concerns about the application remain" and that "many deficiencies noted in the previous notices have not been adequately addressed." Accordingly, the second notice of technical deficiency cannot be



## States and Compacts *continued*

closed based on the information submitted. Under TCEQ rules, an application may be returned if the applicant does not timely submit the necessary additional information in response to a notice of deficiency.

### **Identified Deficiencies and Outstanding**

**Technical Issues** The June 5 letter identifies the following “significant” issues that remain unresolved including the incomplete characterization of the site, performance assessment, waste characterization, and facility design:

- ◆ Depth to the water table is not sufficiently demonstrated by the site characterization. According to TCEQ, “[I]t has not been adequately demonstrated that groundwater will not intrude into the disposal units and contact the waste.”
- ◆ Surface geologic processes, such as erosion, are not sufficiently discussed in the application to demonstrate that these processes will not affect the ability of the disposal site to meet the performance objectives and to provide defensible modeling and prediction of long-term impacts. According to TCEQ, “[t]he application lacks site-specific data on surface geologic processes to support conclusions made in the application.”
- ◆ The performance assessment “does not appear to use defensible assumptions in the modeling or use adequate waste characterization for the basis of the assessment.”
- ◆ The application’s waste characterization information appears to be an underestimation in terms of total radioactivity and specific radionuclide concentration. According to TCEQ, “[t]his underestimation impacts performance assessment, worker dose calculations, accident scenario assessments and the overall assessment of the site in meeting required performance objectives.”
- ◆ With respect to the proposed disposal of Class A low-level radioactive waste containing longer-

lived radionuclides, the facility design does not comply with TCEQ rules.

Additional technical issues related to the application, according to the June 5 letter, include the adequacy of engineering features of the proposed facility design; groundwater monitoring and other environmental parameters; radiological protection and related ALARA (“As Low As Reasonably Achievable” requirement for exposure to radiation) considerations; proposed staffing and training programs; corrective action plan for operations; waste verification plans; decommissioning plan; cost estimates; and the lack of professional engineering seals on documents as required.

### **Requests for Specific Exemption from TCEQ**

**Rules** The WCS application includes two requests for specific exemption from TCEQ rules. Both are related to ownership, in fee, by the state or federal government prior to accepting waste. One involves the deferral of ownership of the federal waste facility portion of the site by the U.S. Department of Energy until decommissioning rather than prior to accepting waste. The other involves the use of surface use agreements in lieu of outright ownership of mineral rights under the proposed facilities.

In regard to these exemptions, the June 5 letter states as follows:

The requests for exemption do not include necessary justification to recommend granting these exemptions. The requests for exemption from applicable rules do not adequately explain that the proposed exemption is as protective of the environment and the public health as the method or standard that would otherwise apply, and evidence that arrangements have been made for assumption of ownership in fee by the federal government for the federal waste disposal facility has not been provided in the application.

## States and Compacts *continued*

### Next Step

In the letter, Eden states that he is directing TCEQ staff to prepare a specific list of issues that were not adequately addressed in WCS' response to the second technical notice of deficiency. In order to address the deficiencies and to provide staff additional time to review any supplemental responses, Eden advises WCS to request an extension of time. Eden emphasizes that "any further responses and corresponding revisions to the application must be thorough, concise and address all issues."

It is unclear at this time how the noted outstanding issues and technical deficiencies will impact the timeline for reviewing the license application. Under TCEQ rules, absent the suggested request for an extension of time, TCEQ technical review of the application was scheduled to be completed by August 31, 2006 – after which time a draft license and hearing notice could be scheduled for publication, if recommended for licensure. Thereafter, it was anticipated that administrative hearings could be held in late 2006, with a proposal for licensing decision expected in late 2007. By statute, TCEQ Commissioners would then issue a license or denial 90 days later—in early 2008.

*A copy of the June 5 Eden letter to Baltzer is available on the TCEQ's website at [http://www.tceq.state.tx.us/permitting/waste\\_permits/rad\\_waste/wcs\\_license\\_app.html](http://www.tceq.state.tx.us/permitting/waste_permits/rad_waste/wcs_license_app.html).*

### Background

Waste Control Specialists submitted a license application to TCEQ on August 4, 2004. Thereafter, there were three rounds of administrative notice of deficiencies that spanned 225 days, as built into the statutory timeline for license review. On February 18, 2005, TCEQ issued a Notice of Administrative Completeness.

On March 31, 2005, a public meeting was held in Andrews County, Texas to accept formal public comment on the administratively complete application. In addition, written comments were

accepted by the TCEQ up to the public meeting to be included in the written evaluation, and at any time during the application review process.

On May 1, 2005, the TCEQ Executive Director evaluated the staff's written evaluation based on statutory tiered criteria and the administratively complete application materials. The criteria are as follows:

- Tier 1 Criteria: site characteristics and financial assurance requirements
- Tier 2 Criteria: engineering and design
- Tier 3 Criteria: technical qualifications and facility operations
- Tier 4 Criteria: land use compatibility and socioeconomic effect

On September 16, 2005, TCEQ sent a certified letter to WCS itemizing the first round of various technical deficiencies contained in the company's license application. WCS responded by letter dated November 30, 2005.

On January 30, 2006, TCEQ issued a second and final Technical Notice of Deficiency. WCS responded with submissions on March 31 and April 28 of this year.

*For additional information, contact Susan Jablonski of the Texas Commission on Environmental Quality at (512) 239-6731 or Rodney Baltzer of Waste Control Specialists at (972) 448-1415.*

*(Continued from page 1)*

“If other states start passing legislation similar to [the CPA], the simple fact is that DOE will not be moving waste anywhere among its nationwide sites as it proposes to do as part of its nationwide cleanup program,” wrote the court in a 62-page ruling. “Decisions which need to be made at a national level addressing national concerns cannot be trumped by protectionist regulations enacted by individual member states.”

**Severability** In regard to the issue of severability, the court held that the “operative” provisions of the CPA cannot be divorced from the “Purpose,” “Policy,” and “Definitions” sections. According to the court, the latter sections “manifestly reveal that the CPA seeks to regulate ‘mixed waste’ as a whole for safety purposes, including the AEA radioactive component of such waste, in contravention of the AEA, and in contravention of the RCRA which limits the State’s authority to the hazardous waste component.” Indeed, the court held that the plain language of the CPA contradicts the defendant’s claim that the initiative does not provide the state with any more authority than the Hazardous Waste Management Act (HWMA). In support of this finding, the court points to the Washington State Supreme Court’s answers to certified questions. (See *LLW Notes*, July/August 2005, pp. 14-17.) Accordingly, the court ruled that “[t]he CPA is facially invalid as a whole because regulation of AEA radionuclides for radiological safety purposes is preempted by the AEA, and RCRA does not allow such regulation either.”

**Acknowledgement of Voter Concerns** In regard to the concerns of Washington State voters that were intended to be addressed by the initiative, the district court wrote as follows:

The court does not intend in the slightest to diminish the concerns of Washington voters regarding the present and future management of nuclear waste at Hanford. These are very legitimate concerns in light of the volume of waste already at Hanford and the existing contamination problems. Congress has said, however, that it is the

federal government which must address the issue of nuclear safety with regard to AEA materials, including as it relates to the AEA radioactive component of mixed waste. Congress has limited the State’s authority to the hazardous waste component of mixed waste. Because those components are inextricably intertwined, tension is created. Congress has recognized this tension and addressed it in the RCRA, making clear that although the State cannot regulate the radioactive component, the federal government is obliged to include the State in the formulation of a plan to address mixed waste at federal facilities. At Hanford, this plan is embodied in the TPA.

Whether the State can exercise any additional authority under the RCRA/HWMA over the hazardous waste component of mixed waste is not clear, but what is clear is that the CPA exceeds the boundaries of that authority. At present, the State and its citizens must content themselves with exercising hazardous waste authority under the HWMA, enforcing the duties and obligations of the United States under the TPA, and enforcing any other duties and obligations of the United States under CERCLA and any other applicable federal law.

**Impact** The district court’s ruling will likely not have any immediate impact in the sense that the CPA was not being enforced while the case was pending. In addition, the DOE has agreed to suspend waste shipments to Hanford in a separate legal proceeding until it reconsiders the environmental impact of its waste disposal plans for the Washington nuclear reservation. That work is not expected to be done for at least two years.

### **Background**

**The Initiative** By a margin of roughly 2 to 1, voters in the State of Washington on November 2, 2004 overwhelmingly approved an initiative to

require the U.S. Department of Energy to clean up the Hanford nuclear reservation before it sends any additional waste to the facility. In addition, initiative 297 also seeks to prevent the disposal of waste in unlined trenches. (See *LLW Notes*, January/February 2004, p. 7.) The initiative—which is known as the “Cleanup Priority Act”—was sponsored by Heart of America Northwest and received endorsements from environmental groups, the state Democratic Party and the League of Women Voters.

**The Lawsuit** After passage of the initiative, DOE filed a lawsuit challenging its constitutionality and sought a restraining order on its enforcement. In so doing, the department argued that there are too many uncertainties about how the state will implement the measure. In addition, Department of Justice attorneys contended that some cleanup efforts at the site have already been halted as a result of the initiative. On December 2, 2004, the judge for the U.S. District Court of the Eastern District of Washington ruled for the federal government and issued the requested restraining order—although waste shipments to the site had already been halted under another lawsuit. In so ruling, the judge found that there is a possibility that the initiative may be invalid and that DOE will suffer irreparable injury with regard to onsite cleanup at Hanford if it were to immediately become law. (See *LLW Notes*, November/December 2004, pp. 13 - 14.)

Federal attorneys are seeking to invalidate the initiative on various grounds including that it

- ◆ pre-empts the federal government's nuclear waste and interstate commerce policies; and,
- ◆ imposes an illegal tax on the federal government.

On July 28, 2005, the Washington State Supreme Court answered certified questions of state law for the district court pertaining to the CPA. (See *LLW Notes*, July/August 2005, pp. 14 - 17.) In particular, the state court provided certified answers to five questions on how the act should be interpreted. It

is important to note that while the state court answered questions regarding interpretation of the initiative, however, the court did not rule on the constitutionality of the initiative or parts thereof. Instead, the case was returned to the federal district court, which then applied the state court's certified answers in adjudicating the case.

**Activities** Currently, about 120,000 cubic meters of radioactive waste are retrievably-stored at Hanford. The State of Washington and the federal government recently agreed on a long-term schedule for cleaning up the waste. In addition, the federal government has shipped small quantities of radioactive waste from two other federal sites to Hanford for packaging before sending it on to the Waste Isolation Pilot Plant (WIPP) in New Mexico.

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### ***Energry Arkansas, Inc. v. Central Interstate Low-Level Radioactive Waste Commission***

## **Utilities Sue Central Commission Over Undisbursed Funds**

On April 25, six generators filed suit in the U.S. District Court for the District of Nebraska against the Central Interstate Low-Level Radioactive Waste Commission. The complaint seeks, among other things, to preserve the plaintiffs' interest in \$5 million in remaining, undisbursed settlement funds from a prior lawsuit against the State of Nebraska that challenged the state's activities in reviewing a license application to develop a low-level radioactive waste disposal facility in Boyd County.

As of press time, the Central Commission has not responded to the new complaint.

### **Prior Lawsuit and Settlement**

In 1999, several utilities filed a lawsuit alleging, among other things, that Nebraska had engaged in bad faith in its review of the Boyd County facility license application. (See *LLW Notes*, January/February 1999, pp. 16-17.) The Central Commission, which was originally a defendant in the action, realigned itself as a plaintiff and pursued the case on behalf of the utilities. On September 30, 2002, the U.S. District Court for the District of Nebraska 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 Notes*, September/October 2002, pp. 1, 15-17.) The court awarded the compact commission over \$151 million in damages. In its order, the court dismissed as premature the utilities' claims for the imposition of a constructive trust or a resulting trust with respect to the monies awarded in the judgment.

Appeals were filed, but the parties subsequently agreed to settle the lawsuit upon the payment of monies from the state. (See *LLW Notes*, July/August 2004, pp. 1, 12-13.) On August 1, 2005, the state paid approximately \$145.8 million to the commission.

### **Distribution of Settlement Funds**

In January 2005, the Central Commission's attorney notified the plaintiffs that the commission would be creating a "settlement fund" on August 1, 2005 and that any claims should be submitted to him on behalf of the commission. On March 25, 2005, the plaintiffs submitted a joint claim to the commission for approximately \$129.8 million. According to the complaint, the amount of this claim includes the portion of the judgment (89.005%) attributable to the approximately \$88.5 million in prepayments from the plaintiffs that were made to the commission under a funding agreement for the proposed facility, plus the prejudgment interest attributable to such payments.

On July 15, 2005, the commission adopted a series of resolutions, including one that determined that the plaintiffs' claims totaled approximately \$129.8 million. The resolution approved payment to the generators of approximately \$114.75 million—with \$15 million being withheld pending investigation, study and consideration of the commission's future role and obligations and pending the commission's determination as to its need for the retention of substantial funds. Other resolutions passed at the same time provided for full payment of the claim of the developer (US Ecology) and reimbursement of the member states for their contributions to the Community Improvement Fund. The resolutions also included a determination that "no need currently exists for the siting, construction and operation of a low-level radioactive waste disposal facility in the Compact region and that no currently available or anticipated funds shall be utilized in pursuit of a disposal facility within the Compact region."

The initial \$114.8 million in settlement funds was distributed to the plaintiffs on August 1, 2005. On February 24, 2006, the commission approved the distribution of an additional \$10 million to the plaintiffs. On March 23, 2006, James O'Connell, an Executive Consultant for the Central Commission, notified the plaintiffs that the commission's retention of the remaining \$5 million was a "final decision" with respect to their claims "though not a final decision regarding the ultimate disposition of the settlement funds retained."

### **Initial Funding Agreement**

The plaintiffs contend that beginning in January 1988 they agreed to advance prepayments to the Central Commission for future disposal services. The prepayments were intended to be used by the commission to meet its pre-licensing payment commitments to US Ecology and to reimburse Nebraska's license review costs. In exchange for the prepayments, the plaintiffs contend that the commission agreed to use its best efforts to site, license, develop and construct a regional disposal facility. Plaintiffs advanced prepayments in a total

amount of approximately \$88.5 million to the commission under the funding agreement.

### **Claims**

The plaintiffs contend that the \$88.5 million that they provided in prepayments "were rendered worthless by the State of Nebraska's breach of its good faith obligation in the Facility licensing proceedings." The plaintiffs further assert that by characterizing the retention of \$5 million in settlement proceeds as a "final action," the Central Commission "has ostensibly acted to extinguish said claims" thereby leaving the plaintiffs without standing to challenge any future action or decision with respect thereto.

In explaining the cause of their legal action, the plaintiffs write as follows: "Although the Commission has apparently made no decision regarding disposition or expenditure of the retained funds, Plaintiffs bring this action to protect their right and opportunity to review such future decisions and to challenge them if and when the facts and circumstances justify such a challenge."

### **Requested Relief**

Specifically, the plaintiffs are requesting the following relief from the district court:

- ◆ that a trust be imposed on the \$5 million withheld by the Central Commission from the plaintiffs' claims until such time as the parties' rights thereto shall have been fully adjudicated by the court; and
- ◆ such other and further relief as the court may deem just and equitable.

## ***Board of County Commissioners of the County of Adams v. Colorado Department of Public Health and Environment***

### **District Court Dismisses Deer Trail Challenge**

On May 17, the U.S. District Court for the City and County of Denver, Colorado issued an order dismissing a lawsuit against the Colorado Department of Public Health and Environment (CDPHE). The suit, which was filed on January 20 by the Adams County Board of Commissioners, challenges the issuance of a radioactive materials license for the Clean Harbor's Deer Trail Facility. (See *LLW Notes*, January/February 2006, pp. 19 - 20.) In dismissing the suit, the court held that the plaintiff lacks constitutional and prudential standing and that the court thus lacks subject matter jurisdiction over the action.

A separate lawsuit, also filed by Adams County against CDPHE on January 20, remains pending before the District Court of Adams County. That suit challenges the December 21, 2005 renewal of a hazardous waste permit for the Clean Harbor's Deer Trail Facility. (See *LLW Notes*, January/February 2006, pp. 19 -20.)

### **Background**

In January 2005, the State of Colorado received from Clean Harbors a radioactive materials license application that proposes the disposal of Naturally Occurring Radioactive Materials (NORM) and Technologically Enhanced Naturally Occurring Radioactive Materials (TENORM) at the company's Deer Trail facility. CDPHE accepted public comment on the radioactive materials license application during a 60-day period.

In early May 2005, the State of Colorado submitted an application to the Rocky Mountain Board for the designation of the Deer Trail facility as a limited

regional low-level radioactive waste disposal facility. The application submitted to the board was limited to wastes from mining, milling, smelting or similar processing of ores and mineral-bearing material primarily for radium. At a meeting on June 8, the Rocky Mountain Board designated the facility as a limited regional disposal facility for radium processing waste subject to specified terms and conditions, including the subsequent issuance of a radioactive materials license by CDPHE. (See *LLW Notes*, May/June 2005, pp. 1, 7.)

On October 26, Adams County submitted comments and supporting materials in response to an August 2005 CDPHE notice proposing to renew the Deer Trail facility's hazardous waste treatment, storage and disposal permit and to issue the facility a limited radioactive materials license. Adams County opposed the issuance of a final permit and final radiation materials license on the terms and conditions outlined in draft documents earlier released by CDPHE. (See *LLW Notes*, November/December 2005, pp. 10, 11.)

On December 21, CDPHE issued the requested hazardous waste permit renewal and radioactive materials license to the Deer Trail facility. The radioactive materials license allows the facility to accept limited types of naturally occurring radioactive waste (NORM) or such waste that has been modified in industrial processes ... such as from municipal drinking water treatment plants. It prohibits the acceptance of artificial or artificially altered radioactive material from research, medicine, weapons, nuclear power plants or other operations.

*For information on the details of the permit or license, contact Joe Schieffelin, Steve Tarlton or Jeannine Natterman of the CDPHE at (888) 569-1831 or Phil Retallick of Clean Harbors at (803) 691-3427.*

### **The Issues**

Adams County contends CDPHE's issuance of a radioactive materials license to the Deer Trail facility "was in excess of its statutory jurisdiction,

authority, purposes and limitations, was arbitrary and capricious, was an abuse of discretion, was unsupported by substantial evidence, was a denial of a statutory right, was contrary to the Radiation Control Act and its regulations, and otherwise contrary to law." In support of this contention, Adams County alleges, among other things, that

- ◆ Clean Harbors failed to obtain a certificate of designation from Adams County for the operation of a radioactive waste disposal facility prior to issuing the license;
- ◆ CDPHE improperly exempted and waived numerous requirements of the Radiation Control Act, the Low-Level Radioactive Waste Act and regulations promulgated thereunder including requirements for financial assurance warranties, decommissioning warranties, long-term care warranties, and technical information and analyses;
- ◆ CDPHE violated the provisions of the Radiation Control Act by authorizing the commingling of hazardous waste and radioactive waste in one facility;
- ◆ CDPHE improperly exempted Clean Harbors from the requirement that all radioactive waste disposal facilities be owned by the state;
- ◆ CDPHE failed to comply with the public comment, public hearing, legislative and gubernatorial requirements of the Radiation Control Act and improperly denied Adams County's requests for an extension to provide comments and for meaningful public hearings; and,
- ◆ CDPHE has improperly circumvented and preempted Adams County's control of land use decision-making.

*For a more detailed listing of the specific issues raised by Adams County in their January 20 complaint, see LLW Notes, January/February 2006, pp. 19 - 20.*

### **The Motion to Dismiss**

At the May 5 hearing on CDPHE's motion to dismiss, the district court considered and granted a motion to intervene from Clean Harbors, as well as the company's associated motion to dismiss the lawsuit. Clean Harbors' motion to dismiss incorporated arguments raised by the state in its motion.

In dismissing the action, the court wrote as follows:

The Court finds that the CDPHE is vested with ultimate authority in the area of radioactive materials regulation under Colo. Rev. Stat. S. 25-11-103(1) and (2). CDPHE is thus a superior agency to Plaintiff Adams County in this regard. Therefore the Court determines that the case of Romer v. Board of County Commissioners of Pueblo County, 956 P.2d 566 (Colo. 1998) is controlling and Adams County lacks standing under the prudential considerations expressed therein to pursue the judicial relief that it is seeking in this case.

The court incorporated by reference its explanation of its ruling from the transcript of the May 5 ruling from the bench.

### **Next Step**

Adams County has 45 days from the date of the district court's ruling to file an appeal. According to local news reports, the county plans to ask a 3-judge panel of the Colorado Court of Appeals to review the decision. In so doing, it is reported that the county will allege that the state and Clean Harbors violated the county's certificate of designation that stipulates that radioactive waste will not be accepted at Deer Trail. In addition, it is further reported that the county will argue that the state streamlined the licensing process and bypassed state and federal regulatory requirements.

Despite reports of plans for an appeal, CDPHE's Hazardous Waste Division Director Gary Baughman was quoted in local news as saying that the company may accept radioactive waste. "The legal process has taken place, the judge has dismissed Adams County's appeal and Clean Harbors is free to proceed," said Baughman. The state has asked Clean Harbors to notify it when they will begin receiving shipments, however, so CDPHE inspectors can be on site to ensure procedures are being followed.

Phil Retallick, Clean Harbors' Senior Vice President of Compliance and Regulatory Affairs, was quoted in the same local press as stating that the company will take its "cue" from the state. According to Retallick, "[w]e are waiting for the official ruling from the judge and advice from our legal counsel."

*For information on the Deer Trail facility, please contact Phil Retallick of Clean Harbors at (803) 691-3427. For information on Adams County's complaints, please contact Howard Kennison of Lindquist and Vennum at (303) 573-5900.*



### ***Advisory Committee on Nuclear Waste***

## **ACNW Discusses Spent Fuel Reprocessing**

The U.S. Nuclear Regulatory Commission's Advisory Committee on Nuclear Waste (ACNW) met in Rockville, Maryland on June 6 – 7 to discuss matters related to the reprocessing of spent nuclear fuel. During the course of the meeting, the committee—which reports to and advises the Commission on all aspects of nuclear waste management—received briefings on theory and technology used in the past for reprocessing, as well as the implications of the U.S. Department of Energy's Nuclear Fuel Recycling Program for NRC regulations.

*An agenda from the ACNW meeting can be found at <http://www.nrc.gov/reading-rm/doc-collections/acnw/agenda/2006/>.*

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### ***Atomic Safety and Licensing Board***

## **NRC Licenses LES Enrichment Plant in New Mexico**

On June 23, the U.S. Nuclear Regulatory Commission announced that staff has issued a license to Louisiana Energy Services (LES) to construct and operate a gas centrifuge uranium enrichment plant in Lea County, New Mexico. The license—which is the first ever issued by NRC for a full-scale uranium enrichment plant—authorizes LES to enrich uranium up to 5 percent of the fissile isotope uranium-235 for use in the manufacture of nuclear fuel for commercial power plants.

### **LES and Gas Centrifuge Technology**

LES consists of a consortium of U.S. and European energy companies. The company plans to use

centrifuge technology developed by Urenco and used for more than 30 years in the United Kingdom, the Netherlands, and Germany. The LES facility, known as the National Enrichment Facility, will represent the first commercial use in the United States of gas centrifuge technology for enriching uranium. Construction on the facility is expected to begin in August, with operations commencing in 2008 and the plant reaching full capacity in 2013.

The LES application was reviewed by several federal agencies for foreign ownership, control and influence concerns given the sensitive nature of gas centrifuge technology. No concerns were identified, however, since the flow of classified information would be into the United States. In addition, NRC plans to conduct inspections during construction and operation of the National Enrichment Facility and will hold a public meeting in Lea County in the near future to explain its oversight plans.

“I am pleased that the NRC's Licensing Board has issued a timely decision in this adjudication,” said NRC Chair Nils Diaz.

### **Licensing Background**

LES submitted a license application to the NRC on December 13, 2005. NRC staff then completed what the agency terms “extensive and thorough” environmental and safety reviews of the proposed facility. An environmental impact statement was issued in June 2005 that contained staff findings that there would be no significant environmental impacts that would preclude licensing the facility. A safety evaluation report was also issued in June 2005 (with several supplements issued through May 2006) that contained staff conclusions that the LES' proposed facility and safeguards comply with NRC regulations and do not pose an undue risk to the health and safety of workers or the public.

Two sets of adjudicatory hearings on the LES application were conducted by a three-judge panel of the NRC's Atomic Safety and Licensing Board.

The Nuclear Information and Resource Service (NIRS) and Public Citizen jointly raised several environmental and technical contentions during the hearings—focusing mainly on the potential impacts of the proposed facility on groundwater quality and local and regional water supplies, LES' plans for disposing of depleted uranium, and other associated issues. Evidentiary hearings on the contentions were heard from February 2005 through February 2006 in both Hobbs, New Mexico and at NRC headquarters in Rockville, Maryland. In addition, the licensing board held hearings in Hobbs in March 2006 to consider the adequacy of NRC staff's environmental and safety reviews. The licensing board then issued several rulings, including a final partial decision on June 23 that cleared the way for staff to issue the license. Petitions for Commission review of a May 31 licensing board decision remain pending.

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

## **License Renewals Continue to Move Forward**

On May 4, the U.S. Nuclear Regulatory Commission announced that it has renewed the operating licenses of the Browns Ferry Nuclear Plant—Units 1, 2 and 3. Later in the month, on May 22, NRC staff issued a final environmental impact statement (EIS) on the proposed renewal of the operating licenses for the Nine Mile Point Nuclear Station, Units 1 and 2. One month earlier, on April 18, NRC staff issued a final EIS on the proposed renewal of the operating licenses for the Brunswick Steam Electric Plant, Units 1 and 2. And, NRC recently held public meetings on the environmental reviews for renewal of the operating licenses of the Vermont Yankee and Pilgrim nuclear power plants.

### **Browns Ferry Nuclear Power Plant**

The Browns Ferry Nuclear Power Plant is located near Decatur, Alabama. The current operating license for Units 1, 2 and 3 are set to expire on December 20, 2013, June 28, 2014, and July 2, 2016, respectively. The Tennessee Valley Authority submitted a license renewal application for the units on January 6, 2004. NRC staff then held two public meetings on April 1, 2004, in Athens, Alabama on the environmental review related to the license renewal application. The Advisory Committee on Reactor Safeguards—an independent body of technical experts which advises the Commission—recommended renewal of the Browns Ferry operating licenses on March 23, 2006. With the renewal, the license for Unit 1 is extended until December 20, 2033; the license for Unit 2 is extended until June 28, 2034; and the license for Unit 3 is extended until July 2, 2036.

*A copy of the Browns Ferry application can be found at <http://www.nrc.gov/reactors/operating/licensing/renewal/applications/browns-ferry.html>. A copy of the final environmental impact statement is available at <http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1437/supplement21.index.html>.*

### **Nine Mile Plant**

The Nine Mile Nuclear Power Plant is located in Scriba, New York. Constellation Nuclear submitted a license renewal application for the two units on May 27. The current operating licenses for Units 1 and 2 expire on August 22, 2009 and October 31, 2026, respectively. A draft Supplemental Environmental Impact Statement on relicensing of the plant was issued on September 30, 2005. The final report, issued on May 22, 2006, contains NRC staff's conclusion that there are no environmental impacts that would preclude license renewal for an additional 20 years of operation.

*The Nine Mile renewal application can be found at <http://www.nrc.gov/reactors/operating/licensing/renewal/applications/nine-mile-pt.html>. The final EIS is posted on*

## Federal Agencies and Committees *continued*

*the NRC web page at <http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1437/supplement24/index.html>.*

### **Brunswick Nuclear Power Plant**

The Brunswick Plant is located just north of Southport, N.C., and the current operating licenses for Units 1 and 2 expire on September 8, 2016 and December 27, 2014, respectively. The licensee, Carolina Power and Light Company (now doing business as Progress Energy Carolinas, Inc.) submitted the renewal application on October 20, 2005. A public meeting was held on November 4, 2005 in Southport, N.C. to discuss how the agency will review the application. The final EIS, issued on April 18, 2006, contains NRC staff's conclusion that there are no environmental impacts that would preclude license renewal for an additional 20 years of operation.

*A copy of the Brunswick relicensing application is available on the NRC web site at <http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html>. The Brunswick final EIS is available at <http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1437/supplement25/index.html>.*

### **Vermont Yankee Nuclear Power Station**

The Vermont Yankee Nuclear Plant is a boiling water reactor located in the town of Vernon, Vermont. Entergy Nuclear Operations, Inc. submitted a renewal application for the operating license of the plant on January 25, 2006. The current operating license expires on March 21, 2012.

NRC staff have determined that the application contains sufficient information for the agency to "doCKET," or file, the application and begin a technical review. A notice of opportunity to request a hearing was published in the *Federal Register* in March 2006. In response to such requests, NRC held two public meetings on June 7, 2006 on the environmental review of the license renewal application. NRC also hosted an open house on June 6, 2006 to provide members of the public with an opportunity to talk informally with agency staff about the renewal process.

*The Vermont Yankee renewal application can be found online at <http://www.nrc.gov/reactors/operating/licensing/renewal/applications/vermont-yankee.html>.*

### **Pilgrim Nuclear Power Station**

The Pilgrim Nuclear Plant is a boiling water reactor located on the western shore of Cape Cod bay in the town of Plymouth, Massachusetts. Entergy Nuclear Operations, Inc. submitted an application to renew the operating license for the plant on January 25, 2006. The current operating license expires on June 8, 2012.

NRC staff have determined that the application contains sufficient information for the agency to "doCKET," or file, the application and begin a technical review. A notice of opportunity to request a hearing was published in the *Federal Register* in March 2006. In response to such requests, NRC held two public meetings on May 17, 2006 on the environmental review of the license renewal application. NRC also hosted an open house prior to each meeting to provide members of the public with an opportunity to talk informally with agency staff about the renewal process.

*The Pilgrim renewal application can be found at <http://www.nrc.gov/reactors/operating/licensing/renewal/applications/pilgrim.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 33 reactor units. In addition, NRC is currently processing license renewal requests for several other reactors.

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

## ESP Applications Move Forward

The U.S. Nuclear Regulatory Commission is reviewing the supplemented, revised application for an Early Site Permit (ESP) from Dominion Nuclear North Anna, LLC (Dominion). In addition, the agency recently issued a final environmental impact statement (EIS) and safety evaluation report (SER) on the proposed ESP for the Grand Gulf site. And, NRC held meetings in Waynesboro, Georgia on May 10 – 11 to discuss how the agency would review an expected ESP application for the Vogtle site.

The ESP process allows an applicant to address site-related issues, such as environmental impacts, for possible future construction and operation of a nuclear power plant at the site. If a permit is granted, the applicant has up to 20 years to decide whether to build a new nuclear unit on the site and to file an application with the NRC for approval to begin construction.

### North Anna ESP

An initial application was submitted for the North Anna site—which is located near Mineral, Virginia—on September 25, 2003. A revised application was submitted on January 13, 2006, with supplements being submitted on April 13 of this year. The revision reflects changes to the reactor design and to the cooling water system referenced in the application. The supplement addresses several aspects of the changes, including the new cooling tower system's impact on both humans and wildlife downstream from the site.

“With this additional information, we can now move forward in reviewing Dominion’s proposal,” said William Beckner, Deputy Director of the Division of New Reactor Licensing in NRC’s Office of Nuclear Reactor Regulation. “The staff expects to finish its technical work on the application by the end of this year.”

A supplement to the draft environmental impact statement (EIS) is expected to be issued in July and a public meeting held in August. A final EIS is expected to be issued by the end of the year. *The updated review schedule is available at <http://www.nrc.gov/reactors/new-licensing/esp/north-anna.html#schedule>.*

### Grand Gulf ESP

System Energy Resources, Inc.—a subsidiary of Entergy—filed the Grand Gulf ESP application on October 21, 2003. The Grand Gulf site is located 25 miles south of Vicksburg. The final EIS issued by NRC in early April contains the staff’s finding that there are no environmental impacts that would prevent issuing the ESP. Combined with the SER issued by NRC in mid-April, this marks the end of the staff’s technical review on the application, although additional steps must be completed before NRC reaches a final decision on the matter.

With the technical review complete, the Atomic Safety and Licensing Board must conclude its mandatory hearing on the matter before the Commission can reach a final decision on issuing the permit. The NRC expects to finish this process in early 2007.

*The final EIS and SER for the Grand Gulf ESP application can be found at <http://www.nrc.gov/reactors/new-licensing/esp/grand-gulf.html>.*

### Vogtle ESP

The Vogtle site, which is owned by Southern Nuclear Operating Company, currently contains two commercial nuclear power plants. It is located about 23 miles southeast of Augusta, Georgia. Southern has not submitted an ESP application for the site as of yet, but is expected to do so. The May meetings were intended to provide information to the public about the ESP process including how it works and how the public can participate.

## EIS Issued re Proposed Ohio Enrichment Plant

The U.S. Nuclear Regulatory Commission has issued a final environmental impact statement (EIS) on a proposal by the U.S. Enrichment Corporation (USEC) to construct a gas centrifuge uranium enrichment plant in Piketon, Ohio. USEC submitted an application to construct and operate the facility, to be known as the American Centrifuge Plant, in August 2004. The plant would be located on land leased from the U.S. Department of Energy at DOE's Portsmouth Gaseous Diffusion Plant in Piketon.

The final EIS concludes that there would be small to moderate impacts on traffic, air pollution and the local economy, but that anticipated benefits of the facility would outweigh any adverse effects. It addresses nearly 300 individual comments the NRC staff identified from letters, facsimile transmissions and e-mails received from approximately 15 individuals, and from oral comments given from 17 individuals.

*The final EIS is available at <http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1834/>.*

## NRC Proposes "Technology Neutral" Requirements for New Reactor Licensing

On June 15, U.S. Nuclear Regulatory Commission staff met with interested stakeholders in Rockville, Maryland to clarify the agency's approach in an advance notice of proposed rulemaking on changes to requirements for commercial nuclear power plants. The purpose of the meeting was to clarify the general approach of the proposed rulemaking and questions being asked in the document. The staff also described information to be added to the document in July and sought input on format,

topics and agenda for a workshop on this issue—currently planned for August 22 and 23. NRC will be accepting comments on the proposed rulemaking through December 29.

The changes being considered by NRC would establish a comprehensive set of requirements applicable to all nuclear power plant technologies, informed by risk analyses and based on performance criteria. These new requirements would be included in NRC regulations as a new 10 CFR Part 53 and would be intended primarily for any new nuclear power plant. They would also be available to current plants as an alternative to existing requirements in 10 CFR Part 50.

*For information on the advance notice of proposed rulemaking or how to submit comments, contact Joseph Birmingham at (301) 415-2829 or [jlb4@nrc.gov](mailto:jlb4@nrc.gov) or Mary Drouin at (301) 415-6675 or [mxid@nrc.gov](mailto:mxid@nrc.gov).*

## Departure of NRC Chair Nils Diaz

NRC Chair Nils Diaz' term expired on June 30, 2006. Diaz recently determined not to seek a third term and instead to return to his native Florida. Recently, he issued the following statement:

Over the past decade it has been my honor and privilege to serve the nation, first as a member of the Nuclear Regulatory Commission and, for the past three years, as Chairman of this important body.

In that time, the Commission and the dedicated men and women of the NRC have been instrumental in significantly raising the level of safety and security in the industry we are charged with regulating.

Together, we have prepared the NRC for the coming submission of a

significant number of requests for new nuclear power plants. We reacted swiftly after the terrorist attacks of September 11, 2001. We have substantially improved the oversight of existing nuclear plants and all other significant aspects of ensuring safety in the civilian uses of nuclear materials. And we have broadened the level of international cooperation on nuclear issues. It is a record of protecting the American people of which we can all be proud.

It is with deep appreciation for the work of the talented individuals of the NRC that I announce that I am not seeking a third term on the Commission. I plan to return to Florida after my second term expires on June 30, and enjoy time with my family.

### NRC Issues Hurricanes Lessons Learned Report

On April 13, the U.S. Nuclear Regulatory Commission's task force evaluating "lessons learned" from the active 2005 hurricane season issued a final report recommending, among other things, that the agency improve the diversity and reliability of emergency communications equipment based on the loss of land-line and most cellular communications during Hurricane Katrina. The final report contained 13 recommendations in total.

"The NRC performed well in response to the challenges of the 2005 hurricane season; however, we wanted to take a critical look at our actions to continue improving our response activities and be even better prepared for the upcoming hurricane season," said Melvyn Lynch, the task force team leader and an official in the NRC's Office of Nuclear Security and Incident Response. "Although satellite phones allowed us to maintain contact with the plants, alternate means for reliable

communications was highlighted as a particular area where improvements could – and should – be made."

In addition to the communications equipment recommendation, the task force also assigned a high priority to the recommendation that the NRC improve its natural disaster response procedures for nuclear facilities and materials licensees to clearly define roles and responsibilities, and to improve dispatching of responders and site staff. In addition, several recommendations dealt with materials licensees and relationships with Agreement States. For example, the report recommended the NRC assess the benefit of adding latitude and longitude tracking information to the National Source Tracking System to enhance response to natural disasters.

*The full report will be available through the NRC's Agencywide Documents Access and Management System (ADAMS) at <http://www.nrc.gov/reading-rm/adams.html> under accession number ML060900004.*

### Monitoring and Oversight of Groundwater Contamination Continues

The U.S. Nuclear Regulatory Commission is continuing to address instances of contaminated groundwater at nuclear power plants in Illinois and New York to ensure that plant operators take corrective actions. All available information continues to show that public health and safety are unaffected by these unintended releases of radioactive material; but, the agency nonetheless continues to address associated concerns.

The agency is inspecting potential tritium-related issues at all operating nuclear power plants in Illinois, as well as the previously shut down Zion facility. NRC has also inspected groundwater contamination at the Indian Point facility in Buchanan, New York. NRC staff and state

officials are analyzing groundwater samples at affected plants to verify the effectiveness of licensees' analytical methods.

NRC has also established a task force to evaluate the inadvertent, unmonitored releases, as well as the regulatory requirements associated with the structures, systems, and components from which the releases emanated. The task force will recommend improvements that may be applicable to the agency, the industry or both. This task force is scheduled to complete its review in late summer 2006.

*The latest information about tritium can be accessed at <http://www.nrc.gov/reactors/operating/ops-experience/gndwtr-contam-tritium.html>.*

### **NRC Relieves Certain Persons from Energy Act Requirements**

On May 25, the U.S. Nuclear Regulatory Commission approved a final rule, effective immediately, to relieve certain individuals who have been approved by the Commission for access to Safeguards Information (SGI) from the fingerprinting and criminal history checks otherwise required by the Energy Policy Act of 2005. SGI is a form of sensitive, unclassified information related to the security of nuclear facilities and materials. NRC has the authority to designate and protect SGI.

Individuals covered by the final rule include federal, state and local officials involved in security planning and incident response, certain Agreement State employees, and members of Congress who request access to SGI as part of their oversight function. According to agency, "[t]he regulatory relief, authorized by the Atomic Energy Act, is necessary for the NRC to continue to share SGI with certain categories of international and domestic government representatives." NRC still plans to revise and republish a proposed SGI rule that may more fully address fingerprinting and criminal

history checks. The revision is taking longer than expected, however, and the agency determined that immediate relief for certain individuals is necessary.

The final rule is titled, "Relief from Fingerprinting and Criminal History Records Checks Required by the Atomic Energy Act, Section 149." It was recently published in the *Federal Register*.

### **Comment Sought re Draft SRP for DOE Waste Determinations**

The U.S. Nuclear Regulatory Commission is seeking public comment on a draft Standard Review Plan for the agency's technical reviews of waste determinations by the U.S. Department of Energy regarding cleanup efforts at several DOE sites. The draft review plan is intended to provide guidance to NRC staff in implementing the agency's role in the waste determination process and the NRC's monitoring activities under the 2005 National Defense Authorization Act (NDAA). That act gave DOE authority to manage certain wastes, known as "incidental wastes," from reprocessing of spent nuclear fuel at DOE sites in South Carolina and Idaho as low-level radioactive waste provided the NDAA's criteria can be met. NRC is given a consultation role under the act in DOE's waste determinations and a monitoring role in the department's waste disposal actions.

Incidental waste is "material resulting from the reprocessing of spent nuclear fuel that does not need to be disposed of as high-level waste in a geologic repository, because the residual radioactive contamination is sufficiently low that it does not represent a hazard to public health and safety, provided the waste is properly isolated from the environment." Technical analyses documented in a waste determination are used by DOE to evaluate whether waste is incidental or high-level waste.

The draft review plan provides guidance for NRC staff in evaluating non-high-level waste determinations developed by DOE under the

NDAA at the Savannah River Site in South Carolina and the Idaho National Engineering Laboratory, as well as similar determinations at the Hanford Site in Washington State and the West Valley Demonstration Project in upstate New York. NRC's experience in providing technical advice to DOE in earlier waste determinations are drawn upon in the review plan, as are the agency's technical review of DOE's saltstone determinations at the Savannah River Site under the NDAA.

A public meeting on the scope of the Standard Review Plan was held in November 2005 and a *Federal Register* notice requesting comments was also published. Interim guidance for performing concentration averaging for waste determinations was published by NRC in the *Federal Register* in December 2005. The interim guidance is included in the draft Standard Review Plan and is again open for comment.

*The draft Standard Review Plan is available at <http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1854>. Public comments will be accepted through July 31, 2006. Comments may be submitted by e-mail to [NRCREP@nrc.gov](mailto:NRCREP@nrc.gov) or via facsimile to Anna Bradford at (301) 415-5397.*

### **NRC Assesses Revised Differing Professional Opinions Program**

In late May, the U.S. Nuclear Regulatory Commission released a comprehensive assessment of its Differing Professional Opinions (DPO) Program—including a review of cases filed and employee perceptions of the program. The report—which was issued by NRC's Office of Enforcement—covers the period from May 2004 through the end of 2005. In addition, it addresses employee concerns about the program identified by the agency's 2005 Safety Climate and Culture Survey. The DPO program assessment details the performance of the program and how agency

employees perceive it. The assessment identifies specific issues and recommendations for each of the program's performance objectives.

"The DPO Program is an important part of the NRC's effort to ensure that all employees and contractors feel free to express their views on issues related to the agency's mission and strategic goals, including safety, security, openness, effectiveness, and management, and that agency decision makers have access to a wide range of information and opinions on these matters," said Rene Pederson, who has managed the program since it was revamped two years ago and placed within the Office of Enforcement.

NRC accepted nine DPO's from members of the staff during the period covered by the assessment. Two were closed by the end of 2005 and resulted in improvements in agency procedures. One was subsequently withdrawn and six remained under consideration as of the end of 2005. Two additional submissions were returned as premature because the issues raised were still undergoing staff review.

*The assessment report is available in the NRC's ADAMS document management system at <http://www.nrc.gov/reading-rm/adams/web-based.html> by entering accession number ML061370538 in the search window.*

### **NRC Reorganizes the Offices of STP and NMSS**

The U.S. Nuclear Regulatory Commission has announced the reorganization of the Offices of State and Tribal Programs (STP) and Nuclear Materials Safety and Safeguards (NMSS). The reorganization, which was approved by the Commission on June 16, will result in two new offices. In particular, the portion of NMSS that is associated with the materials program will be merged with STP to become the new Office of National Materials Program (ONMP). In contrast, the remaining portion of NMSS that focuses on



nuclear fuel, safe storage, transportation and high-level radioactive waste will remain in NMSS and retain that office's title. The realignment is intended to provide for more effective organizational focus on (1) the nation's evolving energy and fuel cycle strategy to support the increased demand for nuclear power generation capacity and (2) the increasing number and contribution of Agreement States in the regulation of radioactive materials nationwide.

NRC is in the early stages of developing a detailed plan to help ensure a smooth transition. The agency expects the reorganization to be effective in October 2006. In a June 19 letter to states, Native American tribal leaders, and advance notification governor designees that announced the reorganization, Janet Schlueter (Director of NRC's Office of State and Tribal Programs) wrote as follows:

"We firmly believe that this reorganization will better position the U.S. Nuclear Regulatory Commission to meet the changing external environment. We remain committed to ensuring that, while organizational changes are occurring, we will continue to closely coordinate with your organization and its members to ensure our focus remains on the national materials program."

According to Schlueter's letter, the new ONMP, as proposed, is intended to "better reflect and help strengthen the role of the Agreement States in the national materials program by merging functions and resources that currently reside in STP and NMSS." The realignment is also intended to "elevate[] the visibility of State and Tribal programs to a major program office level."

*For additional information, please contact Dave McIntyre, NRC Public Affairs Officer, at (301) 415-8206.*

## NRC Proposes Changes re Worker Doses

The U.S. Nuclear Regulatory Commission is considering amending several regulations that deal with radiation doses to workers at licensed facilities. The proposed changes include the following:

NRC license holders would be relieved of the requirement to automatically provide annual dose reports to workers who received less than 100 millirems (mrem) of total dose or less than 100 mrem to any individual organ or tissue in the previous year. Licensees would still be required to provide dose records to those categories of workers upon request. According to a news release, "[t]he 100 mrem limit was selected because it is also the threshold dose for licensees to instruct workers on radiation protection."

The definition of "total effective dose equivalent"—which is meant to ensure both external and internal exposure to radiation is taken into account—would be revised. The proposed change would allow licensees to improve their assessment of the risk arising from work-related radiation exposure.

The way in which commercial nuclear power plant licensees are expected to label containers holding radioactive materials in posted areas would be revised. According to the news release, "[t]he change would allow those licensees to mark the containers according to their radiological hazard instead of giving more detailed information, as long as the containers are only handled by workers trained to minimize any radiation exposure."

The requirement for licensees to try and obtain lifetime dose records for every worker who requires monitoring would be eliminated. The obtaining of lifetime records to evaluate occupational doses in a given monitoring year is no longer required. Instead, licensees would only be required to obtain lifetime dose records when a "planned special exposure" for an adult worker is authorized.

Comments on the revised proposed rule will be accepted for 75 days following publication in the *Federal Register* in June. Comments may be mailed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001, Attn: Rulemakings and Adjudications Staff. Comments may also be e-mailed to [SECY@nrc.gov](mailto:SECY@nrc.gov) or submitted online via the NRC's rulemaking website at <http://ruleform.llnl.gov>.

### NRC Publishes FY 2006 Fees

On May 30, the U.S. Nuclear Regulatory Commission published in the *Federal Register* the licensing, inspection and annual fees that it will charge applicants and licensees for fiscal year 2006 (October 1 – September 30). The final fees rule will become effective July 31.

Congress requires NRC to recover nearly all of its annual appropriated budget through two types of fees: (1) fees that are calculated using an hourly rate for specific NRC services, such as licensing and inspection activities, that apply to a specific license, and (2) an annual fee paid by all licensees, which recovers generic regulatory expenses and other costs not recovered through fees for specific services. The fees, which are paid to the U.S. Treasury and go into the general fund, are contained in NRC regulations 10 CFR Part 170 (fees for licensing and inspection services) and 10 CFR Part 171 (annual fees).

The law dictates that NRC must recover 90 percent of its budget for FY 2006 from fees, less the amount appropriated from the Nuclear Waste Fund for high-level waste activities and appropriated from general funds for waste-incident-to-reprocessing activities. The total amount to be recovered for FY 2006 is approximately \$624 million—which is about \$83 million more than in FY 2005. As a result, annual fees will increase for nearly all licensees.

Under the final fees rule, the hourly rates for Part 170 fees are set at \$217 for the Nuclear Reactor Safety Program and \$214 for the Nuclear Materials and Waste Safety Program. The FY 2005 rates are \$205 for the reactor program and \$197 for the materials program. The increases in the hourly rates are primarily due to the government-wide pay raise and the more accurate allocation of agency overhead to these programs and fee exempt activities.

Under the NRC's new authority from the Energy Policy Act of 2005, the agency will begin charging federal agencies Part 170 fees—with the exception of federally owned test and research reactors that meet certain criteria.

## 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](http://www.nrc.gov)
- EPA Listserve Network • Contact Lockheed Martin EPA Technical Support at (800) 334-2405 or e-mail (leave subject blank and type help in body of message). ..... [listserv@unixmail.rtpnc.epa.gov](mailto:listserv@unixmail.rtpnc.epa.gov)
- EPA • (for program information, publications, laws and regulations) ..... [www.epa.gov](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.

